FILED

99 2 46 MAR 1 -1998

OFFICE OF THE CLERK

No._____

==========

==========

IN THE

SUPREME COURT OF THE UNITED STATES

October 1998 Term

Raymond B. Sherwood

Petitioner,

v.

Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

QUESTIONS PRESENTED FOR REVIEW

Issue 1:

Whether respondent had jurisdiction to issue an Order.

Issue 2:

Whether petitioner was denied due process.

Issue 3:

Whether respondent's actions constitute judicial immunity.

Issue 4:

Whether respondent is immune from responding to a Complaint.

Issue 5:

Whether Judge Wilken acted as an attorney from the bench in defending respondent Marilyn Hall Patel.

TABLE OF CONTENTS

Table of contents.....ii,iii, iv, v, vi

Table of authorities.....vii, viii, ix, x, xi

Questions presented for review.....i

Opinions Below.....1

Statement of Jurisdiction.....2

Constitution and Statutory
Provisions Involved.....2

Statement of the Case.....10

Reasons this Court should grant certiorari.....13

Argument.....15

Conclusion.....29

Appendix I

Opinion - District Court of Dismissal...A-1

Opinion - District Court Order
Reaffirming Dismissal.....A-2

Opinion – Ninth Circuit Court of
Appeals Memorandum.....A-3

Opinion – Ninth Circuit Court of
Appeals Order.....A-4

Agency Summons.....A-5

Agency Summons.....A-6

Verified Petition to Enforce
Agency Summons.....A-7

District Court Order to
Show Cause.....A-8

District Court Order
Setting Conference.....A-9

Opposition Response to
Verified Petition to
Enforce Agency Summons...A-10

District Court Order Enforcing
Summonses.....A-11

District Court Supplemental Order...A-12

Agency Application and Order
of Dismissal.....A-13

APPENDEX II

Plaintiff's Complaint Against Patel...A-14

District Court's Order Setting Case
Management Conference.....A-15

Plaintiff's Motion for Default.....A-16

Plaintiff's Letter Re: Joint Case
Management Statement.....A-17

Plaintiff's Case Management
Statement.....A-18

District Court Order Continuing
Case Management Conference...A-19

District Court Order Denying Motion
For Default Judgment.....A-20

Plaintiff's Motion to Vacate Order
Continuing Case Management
Conference.....A-21

APPENDEX III

Plaintiff's Motion to Vacate Order
Denying Plaintiff's Motion for
Default Judgment.....A-22

Letter from U.S. Assistant Attorney
Susan Kamlet.....A-23

Letter of Response from Sherwood Re:
A-23 above.....A-24

Plaintiff's Motion for Leave to File Motion
for Reconsideration.....A-25

District Court Order Denying Plaintiff's
Motion for Leave to File a Motion
for Reconsideration.....A-26

District Court Order of Dismissal.....A-27

Plaintiff's Objection to Courts Order of
Dismissal.....A-28

District Court Order Reaffirming
Dismissal of Case.....A-29

Plaintiff's Notice of Appeal.....A-30

(Plaintiff's) Appellant's Informal Brief.....A-31

Opinion – Ninth Circuit Court
Memorandum.....A-32

Opinion – Ninth Circuit Court Order.....A-33

Appellant's Petition for Rehearing.....A-34

Letter from Ninth Circuit Court Re:
Late Petition.....A-35

Appellant's Motion to Recall Mandate.....A-36

Ninth Circuit Court Order
Recalling Mandate.....A-37

Appellant's Motion for Summary
Disposition.....A-38

Ninth Circuit Court Denying Rehearing...A-39

Appellant's Motion to Recall Mandate;
Suggestion for
Rehearing En Banc.....A-40

District Court Docket Document.....A-41

District Court Transcript of Proceedings...A-42

Copy of Page from Code of Federal
Regulations Re: Parallel Tables
Of Authority and Rules.....A-43

Copy of Preface page of 1994 Twelfth
Edition United States Code
Signed by Speaker of the House
Of Representatives.....A-44

Copy of page III of the United States
Code indicating Titles that have
And have not been enacted into
Positive Law.....A-45

Copy of District Court Summons
Sherwood v. Patel.....A-46

TABLE OF AUTHORITIES

Cases Page

Edencott v. Perkins 317 U.S. 501.....24

Hafer v. Melo 502 U.S. 21, 1991.....14, 26

Hagans v. Lavine 415 U.S. 533 (1974).....21

Harlow v. Fitzgerld (cite omitted)
Re: Supreme Court Justice
Blackmum's statement.....23, 26

Long v. Rasmussen 281 Fed. Rpt. 236 (1922).....23, 24

Maine v. Thiboutot 1980, 100 S. Ct. 448 U.S. 1,
65 L. Ed. 2d 55,
Removes Judicial Immunity.....14, 26

Marbury v. Madison 5 U.S. 137, 180 (1803).....13, 25

Miranda v. Arizona 384 U.S. 436 p. 491.....13, 25

Norton v. Shelby County 118 U.S. 425, 442,
6 S. Ct. 1121 (1866) etc.....23

Owen v. Indpendence 100 S. Ct. 1398,
1980 445 U.S. 622 L. Ed. 673.....14, 26

Pierson v. Ray 386 U.S. 547, 554 (1967).....14, 22

Pope v. Commissioner 138 F. 2d 1006, 1009
6th Cir. (1943).....23

Russel – Newman Mfg. Co. v. N.L.R.B. C.A.
Tex. 1966 370 F. 2d 1980.....13, 25

United States v. Germane 99 U.S. 508 (1879).....23

U.S. v. Mersky 361 U.S. 431, 4l. Ed.
80 S. Ct. 459.....19

U.S. v. Sims 355 F. Supp 513 (1973).....14, 16

Statutes

United States Constitution 4th Amendment.....2, 13, 24

United States Constitution 5th Amendment.....3, 13, 23, 24

United States Constitution Article II Section 1.....3, 17

United States Constitution Article 6 Section 3.....3,21

Title 1 USC Section 204(a).....3, 18,19, 22

Title 4 USC Section 71.....3, 17

Title 4 USC Section 72.....3, 17

Title 5 USC Section 301.....17

Title 5 USC Section 552.....3, 18

Title 5 USC Section 558.....3, 20

Title 5 USC Section 2105(a).....18

Internal Revenue Code Chapter 76.....4, 15, 21

Title 26 USC Section 7401..4, 13, 14, 15, 16, 21, 23, 24, 25

Title 26 USC Section 7402.....19, 20, 21

Title 26 USC Section 7602.....5,19

Title 26 USC Section 7603.....19

Title 26 USC Section 7604.....5, 20

Title 26 USC Section 7701.....17

Title 26 Code of Federal Regulations, Chapter 1.....18

Title 26 Code of Federal Regulations, Part 601...5, 18, 23

Title 26 Code of Federal Regulations
Section 601.106(f)(1) Rule 1.....6

Title 28 USC Section 454.....6, 29

Title 28 USC Section 547.....6, 14

Title 28 USC Section 2463..... 13

Title 31 USC Section 301.....6, 17

Title 42 USC Section 1983.....6, 26

Title 44 USC Section 1500.....5, 18

Title 44 USC Section 1501.....19

Am Jur

2 Am Jur 2d Section 55.....6

2 Am Jur Section 152.....7

16 Am Jur 2d Section 439.....7, 24

16 Am Jur Section 552.....8, 23

16 Am Jur Section 581.....8, 25

16 Am Jur Section 583.....25

20 Am Jur Section 59.....8, 20, 26

46 Am Jur 2d Section 82.....8, 20, 26

47 Am Jur Section 933.....9

Rules

Title 1 Code of Federal Regulations Section 21.21.....5

Code of Federal Regulations, Chapter 1.....10

Code of Federal Regulations, Chapter 1, 21.21(c)(2).....19

Federal Rules of Civil Procedure Rule 3.....16

Federal Rules of Civil Procedure Rule 8.....9, 14

Federal Rules of Civil Procedure Rule 8(b).....9, 27

Federal Rules of Civil Procedure Rule 8(c).....9, 27

Federal Rules of Civil Procedure Rule 8(d).....10, 27

Federal Rules of Civil Procedure Rule 12(b).....10, 14

Federal Rules of Civil Procedure Rule 12(h)(3).....10, 15

Misc.

Parallel Table of Authorities.....10, 19, 20

Black's Law Dictionary 6th Edition.....16

Legal Reference Guide for Revenue
Officers page 57, 422.....16

The Legal Reference Guide for Revenue Officers.....4

Supreme Court
Justice Blackmum's statement.....23, 26

IN THE
SUPREME COURT OF THE UNITED STATES

October 1998 Term

No._____

Raymond B. Sherwood
Petitioner,

v.

Marilyn Hall Patel
Respondent,

Petition for a Writ of Certiorari To the United States Court of Appeals for the Ninth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

Raymond B. Sherwood hereby petitions for a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals.

OPINIONS BELOW

The ruling of the District Court, Case No. CV 97-02796 CW, ORDER OF DISMISSAL filed Jan. 13,1998, was a denial of petitioner's Complaint and is included herein as part of the Appendix, page A-1.

The Order Reaffirming Dismissal of Case was filed March 10, 1998, and is included herein as part of the Appendix, page A-2.

The official publisher opinion of the Ninth Circuit Court of Appeals filed July 24, 1998, affirmed the District Court, is published as a MEMORANDUM in Sherwood v.

Patel, No. 98-15496, and is included herein as part of the Appendix, page A-3.

The Ninth Circuit Court of Appeals ORDER denying petition for rehearing was filed Dec. 3, 1998 and is included herein as part of the Appendix, page A-4.

STATEMENT OF JURISDICTION

Jurisdiction of the federal District Court below was pursuant to 28 USC Sec. 1331; Sec. 1340; 1343(a) (1), (3) and (4). Its ruling on the issue appealed was on Jan. 13, 1998.

Jurisdiction of the Ninth Circuit Court of Appeals was pursuant to 28 USC Sec. 1291. The Decision in the Ninth Circuit was entered as a Memorandum on July 20, 1998, and petitioner's timely filed Petition for Rehearing was denied on December 3, 1998.

The petitioner's Motion to Recall Mandate; Suggestion for Hearing En Banc is pending.

Jurisdiction of the United States Supreme Court to review the ruling of the Ninth Circuit by Writ of Certiorari is conferred pursuant to 28 USC Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution (Due process requirements).

4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

5th Amendment:
...nor be deprived of life, liberty, or property, without due process of law;

United States Constitution Article II Section 1.
[1] The executive Power shall be vested in a President of the United States of America. (Re:Separation of powers between the Executive, Judicial, and Legislative branches of government.)
Article VI Section 3.
]...and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation , to support this Constitution...

Title 1 USC Section 204(a). United States Code.
Provided, however, that whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States....
(NOTE: Title 26 is conspicuous by its absence.)

Title 4 USC Section 71.
Agency regulations are limited to all territory of the United States included within the present limits of the District of Columbia.

Title 4 USC Section 72.
All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.
Title 5 USC Section 552 et seq.
...for general application statutes at large must be promulgated in the Federal Register...

Title 5 USC Section 558:
(b) Government Organization and Employees. A sanction may not be imposed or a substantive rule of order issued

except within jurisdiction delegated to the agency and as authorized by law.

Internal Revenue Code Chapter 76
Chapter 76 Judicial Proceedings of the Internal Revenue Code Sections 7401 to 7492 relate to the matters of civil action, jurisdiction and due process by the use of the Attorney General, and the Judicial branch of government via the Federal Debt Collection Procedures Act.

The Legal Reference Guide for Revenue Officers. Page 57(16) 0-106 (1-14-87) 422. Authorization.
(1) The authority for the United States to commence a court action for the recovery of taxes is provided for by IRC 7401, as follows: No civil action for the collection or recovery of taxes , or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced. (2) The Attorney General has not delegated the authority to direct the institution of such a proceeding to the United States Attorney. The Secretary of the Treasury has delegated his power of authorization to the Chief Counsel of the Internal Revenue. Where the commencement of such an action has not been authorized or sanctioned it is subject to dismissal. Civil actions commenced under this provision must be brought in the name of the United States and not an official thereof.

26 USC Section 7401:
(a) In General. No civil action for the collection or recovery of taxes,... shall be commenced unless the Commissioner or his delegate
(b) authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

Title 26 USC Section 7402
...at the instance of the United States....by an appropriate process...to grant the court jurisdiction.

Title 26 USC Sec. 7602 (a) Authority to summon, etc.
(l) **Limitation of Authority**. No summons may be issued under this title and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person...

Title 26 USC Section 7604.(a) Jurisdiction of district court.
... the United States district court for the district in which such person resides or is found shall have jurisdiction by **appropriate process**...

Title 26 Code of Federal Regulations, Part 601
...supports the mandate for regulations to be published in the Federal Register before they have general application...

Title 1 Code of Federal Regulations Section 21.21 General requirements: References.
(c) Each agency shall publish its own regulations in full text. Cross-references to the regulations of another agency may not be used as a substitute for publication in full text, unless the Office of the Federal Register finds that the regulation meets any of the following exceptions:
(1) The reference is required by court order, statute, Executive order or reorganization plan. The reference is to regulations promulgated by an agency with the exclusive authority to regulate in a subject matter area, but the referencing agency needs to apply those regulations to its own programs.

Title 44 USC Section 1500 et seq.
...statutes at large must be promulgated in the Federal Register...

Title 26 Code of Federal Regulations Section 601.106(f)(1) Rule 1.
An exaction by the U.S. Government which is not based on law, statutory or otherwise, is a taking of property without due process of law in violation of the 5th Amendment to the U.S. Constitution.

Title 28 USC Section 454. Practice of law by justices and judges.
Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.

Title 28 USC Sec. 547
This and other statutes which provide 60 days for the United States or an officer or agency thereof to answer or otherwise defend are continued by this rule.

Title 31 USC Section 301(a)(b)
...the Secretary of the Treasury is appointed by the President and approved by the Senate, and specifies that as the head of an Executive Department he may prescribe regulations for the government of his department, his agency, and his employees, and at the Seat of government.

Title 42 USC Section 1983
Officers of the court have no immunity from liability when violating a constitutional right and may be held personally liable for damages under Sec. 1983, for they are deemed to know the law. Knowing that they will be liable for all injurious conduct creates incentives for officials to err on the side of protecting citizens constitutionally protected rights. When they do so at their own peril.

2 Am Jur 2d Section 55.
Being creatures of the legislature, administrative agencies have no general, inherent, or common-law powers, but only

those powers conferred upon them by the legislature. ...the source of the powers of administrative agencies lies in statutes, and administrative agencies must find within statutes warrant for the exercise of any authority which they claim.

2 Am Jur Section 152. General nature and basis of authority. It is fundamental law that the legislature can delegate to an administrative agency the power to make rules and regulations to implement a statute. Thus, the origin of the rulemaking capacity is the delegation from the legislature, not a constitutional grant of power to the executive and all rulemaking authority delegated to the administrative agency is limited and defined by the statute conferring the power. Consequently, in the absence of valid statutory authority, an administrative agency may not, under the guise of a regulation, substitute its judgment for that of the legislature. An agency may not promulgate a regulation that adds a requirement that does not exist under the statute. An agency cannot create, remove, or limit substantive rights granted in the enabling act and an agency cannot, without sufficient criteria expressed in the statute, vary the impact of a statute by restricting or limiting its operation through creating waivers or exemptions.

16 Am Jur 2d Section 439. Constitutional guarantees - Generally. Constitutional guarantees can not be imposed upon or destroyed under the guise or device of being regulated. Individual rights under our Constitution are immutable against all hostile legislation, which is not required by consideration of public health or safety, and if a law has no other purpose than to chill the assertion of fundamental Constitutional rights by penalizing those who chose to exercise them, then it is patently unconstitutional. The citizens of a free government are justly jealous of their constitutional rights and privileges and this should be

attributed to them as a virtue rather than a fault. It keeps them on the alert and inspires them with the courage and determination in their efforts to resist the aggressions of arbitrary power. It is just as obligatory upon the citizens to resist encroachments upon the rights and liberties guaranteed by the Constitution as it is for him to uphold and maintain its integrity.

16 Am Jur Section 552. Due Process.
The Constitution provides that neither Congress nor the states may deprive any person of life, liberty, or property without due process of law.

16 Am Jur Section 581
The right of property has been described as a fundamental, natural, inherent right. It is not ex gratia from the legislature but ex debito from the Constitution. It existed before the Constitution which protect it. It is sometimes characterized judicially as a sacred right, the protection of which is one of the most important objects of government.

20 Am Jur Section 59. Jurisdiction.
...jurisdiction is the power to decide erroneously as well as correctly. The distinction between lack of jurisdiction and any other error affecting a decision of a court is important, since when a court lacks jurisdiction its decision, right or wrong, is void and subject to collateral attack.

46 Am Jur 2d Section 82. Acts under invalid law or in excess of jurisdiction. The scope of judicial jurisdiction is generally broadly construed, such that judges who posses jurisdiction are not deprived of absolute immunity by the mere fact that they act upon a void or invalid law, and absolute immunity will apply to judges acting in the exercise of their judicial functions even if the acts are in excess of their jurisdiction or authority. Thus, a distinction must be observed between acts which are merely in excess of

jurisdiction and those involving a clear absence of all jurisdiction over the subject matter. Excess of jurisdiction, as distinguished from the entire absence of jurisdiction, means the act, although within the general power of the judge, is not authorized, and therefore void with respect to the particular case, because the conditions which alone authorized the exercise of the general power in that particular case are wanting, and hence the judicial power is not in fact lawfully invoked. Where there is clearly no jurisdiction over the subject matter, any authority exercised is unsurped authority, and no excuse is permissible if the judge knows of his or her lack of authority.

47 Am Jur Section 933. Generally.
The general rule is that the absence of jurisdiction of a court to render a particular judgment constitutes sufficient cause for a collateral attack upon the judgment by a party whose rights or interests are adversely affected by the judgment, whenever it is sought to be enforced, or in any suit in which its validity is drawn into question, whether the absence of jurisdiction is in regard to the subject matter, the parties, or in proceedings in rem...

Federal Rules of Civil Procedure Rule 8 (In general)
Requires a responsive pleading and establishes penalties for failure to respond.

Federal Rules of Civil Procedure Rule 8(b)
Defenses: Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the avertments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of the avertment, the party shall so state and this has the effect of a denial.

Federal Rules of Civil Procedure Rule 8(c)
A defendant must plead any matter constituting an

avoidance or affirmative defense.

Federal Rules of Civil Procedure Rule 8(d)
Effect of Failure to Deny. Avertments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.

Federal Rules of Civil Procedure Rule 12(b)
How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made at motion.

Federal Rules of Civil Procedure Rule 12(h)(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Code of Federal Regulations, Chapter 1. ...supports the mandate requiring statutes be published in the Federal Register before they have general application.

Parallel Table of Authorities
This document (A-43) does not exhibit any of the required implementing regulations supporting Title 26.

STATEMENT OF THE CASE

This petition for a writ of certiorari is filed under this Court's Rule 10 and is necessary because the United States court of appeals for the Ninth District has sanctioned a lower court decision that has so far departed from the accepted and usual course of judicial proceedings, as to

call for an exercise of this Court's supervisory power, and answer an important question of federal law that should be settled by this Court.

Internal Revenue Agent F. Aguilera issued an Administrative Agency Summons (A-5) for tax years 1989, 1990 and 1991 and a Summons (A-6) for tax year 1994, both dated February 7, 1996. When petitioner (herein, Sherwood) refused to comply with the non-adjudicated document the agency filed a Verified Petition to Enforce Internal Revenue Summonses (A-7), and subsequently, on the same date, May 16,1996, respondent (herein, Patel) issued an Order to Show Cause Re Enforcement of Internal Revenue Service Summonses (A-8) along with an Order Setting Conference (A-9) indicating a Civil Action by the assignment of Case No. C 96-1828 MHP. Sherwood filed a Opposition Response to Verified Petition to Enforce Internal Revenue Service Summonses; Motion to Dismiss (A-10) on July 1, 1996, but Patel disregarded Sherwood's arguments and issued an Order Enforcing Summonses (A-11) dated July 30, 1996, to compel Sherwood to appear before F. Aguilera and give testimony and produce records, and on August 1, 1996 Patel issued a Supplemental Order (A-12) to support her original order. An Application and Order of Dismissal (A-13) was filed on September 20, 1996, requesting that the action be dismissed.

Sherwood filed a Complaint (A-14) No. C 97-2796 CW against Patel on July 30, 1997 citing Abuse of Legal Process; Ruling with Want of Jurisdiction and for Violation of Constitutional Due Process of Law, and the Order Setting Case Management Conference (A-15) was also filed on the same date calling for a case management conference on 10/31/97. When Patel failed to timely respond to the Complaint, Sherwood filed a Plaintiff's Motion for Judgment by Default by the Court (A-16) dated October 3, 1997. On October 6, 1997 Sherwood sent a letter (A-17) and included his Case Management Statement (A-18) to the presiding judge Claudia Wilken, explaining Patel's failure to respond

to the Complaint prevented a "joint" Case Management Statement. Judge Wilken issued an Order Continuing Case Management Conference (A-19) on October 31, 1997 based on her opinion Sherwood's Service was not in accordance with FRCP Rule 4(i) and continuing the Case Management Conference to January 9. 1998. On November 3, 1997 Judge Wilken issued an Order Denying Plaintiff's Motion for Default Judgment (A-20). Sherwood filed Plaintiff's Motion to Vacate Order Continuing Case Management Conference (A-21) on November 12, 1997 along with Plaintiff's Motion to Vacate Order Denying Plaintiff's Motion for Default Judgment (A-22). Sherwood received a letter from Assistant U.S. Attorney Susan Kamlet (A-23) dated November 23, 1997, advising the procedures of FRCP Rule 4(i). Sherwood responded with his letter (A-24) dated December 8, 1997 and asked Kamlet if she was representing Patel. The record will show U S Attorney S. Kamlet failed to respond to the question of representation. Sherwood filed Plaintiff's Motion for Leave to File a Motion for Reconsideration (A-25) on December 11, 1997, because of the courts failure to consider material facts, and the court's response dated December 18, 1997, Order Denying Plaintiff's Motion for Leave to File a Motion for Reconsideration (A-26). The court issued an Order of Dismissal (A-27) dated January 18, 1998, stating Assistant US Attorney S. Kamlet was present at the January 9, 1998 hearing representing Patel and the action is dismissed for failure to prosecute. Sherwood filed Plaintiff's Objection to Court's Order of Dismissal (A-28) on January 26, 1998, but on March 10, 1998, the court issued its Order Reaffirming Dismissal of Case (A-29) and ordered the clerk to close the file. Sherwood filed a Notice of Appeal (A-30) on March 20, 1998, and filed an Appellant's or Petitioner's Informal Brief (A-31) Case No. 98-15496, dated April 6, 1998. The Circuit Court filed a Memorandum (A-32) dated July 24, 1998, affirming the district courts decision and the order Affirming (A-33) this decision was filed and entered August

18, 1998. Sherwood filed a Motion to Recall Mandate (A-34) on August 17, 1998 and the court mistakenly denied this motion with a letter (A-35) dated August 18, 1998, citing timeliness which was followed by Sherwood's letter (A-36) dated August 25, 1998. The court recognized its mistake and recalled its mandate with a Order (A-37) dated August 31, 1998. Sherwood filed Appellant's Motion for Summary Disposition (A-38) on November 30, 1998, and the court issued an Order (A-39) on December 3, 1998, denying petition for rehearing. Sherwood filed a Motion to Recall Mandate, Suggestion for Rehearing En Banc (A-40) dated December 29, 1998.

REASONS THIS COURT SHOULD GRANT CERTIORARI

First, petitioner has been denied the Constitutional guaranteed due process by the District Court's failure to provide one solitary hearing for an opportunity to resolve issues. The District Court records, as supported by the court's docket (A-41) fails to indicate any evidence of a due process hearing. Due process is implicitly preserved by the Constitution and Title 28 USC Sec. 2463, which stipulates that any seizure under United States revenue laws will be deemed in the custody of the law and subject solely to disposition of courts of the United States with proper jurisdiction. Administrative convenience or necessity cannot override the requirement of due process as found in Russel-Newman Mfg. C. v. N.L.R.B. C.A. Tex. 1966 370 F.2d 1980.

Section 7401 is the necessary procedure to meet the Constitutional due process requirements of the 5th and 14th Amendments and where rights secured by the Constitution are involved there can be no rule making or legislation would abrogate them as found in Miranda v. Arizona, 384 U.S. 436 p. 491, but even if the respondent produced some statute to support the failure of due process, such statute would be declared unconstitutional as found in Marbury v. Madison, 5 U.S. 137, 180 (1803).

Patel is expected to know that failure to comply with the statutory requirement of Sec. 7401 would violate constitutional due process, but she opted to disregard the requirements of her oath of office and continued to act with impunity, which gives cause for this action as found in Pierson v. Ray, 386 U.S. 547, 554 (1967), and she has no immunity from liability for violating this Constitutional right as found in Owen v. Independence, 100 S. Ct. 1398. 1980 (445 U.S., 622 L. Ed. 2d 673); Maine v.Thiboutot, 1980, 100 S. Ct. 2502, 448 U.S. 1, 65 L. Ed. 2d 555, Removes judicial immunity; Hafer v. Melo, 502 U.S. 2l, 1991. Second, the only statutory provision for jurisdiction over private citizens envisioned by Congress for this administrative agency is Title 26 Sec. 7401, which requires a Complaint to acquire jurisdiction. Although Case Number C 96-1828 MHP indicates a complaint was filed, this is a false impression, because in this instance a Complaint does not exist, which is a fact acknowledged by Patel, (see: A-42 pg. 3 line 12 to 15). Therefore, without the 7401 required complaint, jurisdiction does not exist, as clearly found by the Court in U.S. v. Sims. Third, there is no statutory provision that allows a judge special provisions to avoid responding to a Complaint. However, Title 28 USC Sec. 547 states, "This and other statutes which provide 60 days for the United States, or an officer or agency thereof to answer or otherwise defend are continued by this rule." Response to a complaint is further supported by the Federal Rules of Civil Procedure Rule 8, which requires a responsive pleading and establishes penalties for failure to respond. This is also supported by FRCP Rule 12(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made at motion. But, respondent failed to make a defensive response, by motion or in any other manner. Fourth, FRCP

Rule 12(h) (3) states, "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Clearly the Transcript (A-42 pg. 3) indicates the petitioner challenged the court's jurisdiction by posing the question whether or not a complaint had been filed in this matter, and equally clear is Patel's response on line 14, "There is no complaint and there need not be in this kind of proceeding." which can only be an admission that Patel had no jurisdiction. This Court should grant certiorari and reconsider whether respondent lacked jurisdiction to render an Order; whether judicial immunity applies; and whether judicial immunity allows failure to respond to a verified complaint, which appears to petitioner to be a case of first impression. For each and all of the above stated reasons, petitioner's Petition for Certiorari should be granted.

ARGUMENT

Jurisdiction

Chapter 76 of the IRC is the correct procedure in place for the IRS to pursue action against "Private Citizens'. The Chapter 76 Judicial Proceedings of the Internal Revenue Code Section 7401 to 7492 covers the matters of civil action, jurisdiction and due process by the use of the Attorney General, and the Judicial branch of government via the Federal Debt Collection Procedures Act. Therefore, since there is NO evidence of authorization from the Secretary pursuant to Sec. 7401 and since Patel has admitted there was "NO COMPLAINT" (A-42 pg. 3 line 14) sent to the district court from the Attorney General pursuant to Sec. 7401 the respondent could not possibly have any jurisdiction in this matter.

Title 26 Section 7401.

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless

the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that action be commenced. Civil Action is addressed in Federal Rules of Civil Procedure Rule 3. A civil action is commenced by filing a complaint with the court. Civil Action, as defined in Black's Law Dictionary: Action brought to enforce, redress, or protect private rights. ("Private Citizens" command "private rights"). Black's Law Dictionary, 6th Ed. Therefore, since no Complaint was filed, as admitted to by the respondent, there was no civil action to grant the agency authority or jurisdiction over the private citizen petitioner, and Section 7401 is jurisdictional as found in U.S. v. Sims. This Court holds that 26 USC Sec. 7401 requirements constitute facts essential to jurisdiction. This failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action. This Court erred in hearing the case on the merits and now determines such hearing was a nullity and not amenable to effective order or judgment, except the order now made that this Court does not have jurisdiction over the subject matter. United States v. Ernist Sims, 355 F. Supp. 513 (1973). The agency has published a legal guide for its agents and officers to follow and references required procedures of Sec. 7401 in, The Legal Reference Guide for Revenue Officers page 57(16) 0-106 (1-14-87). 422. Authorization (1) The authority for the United States to commence a court action for the collection or recovery of taxes is provided for by IRC 7401, as follows: "No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced." (2) The Attorney General has not delegated the authority to direct the institution of such a proceeding to the United States Attorney. The Secretary of the Treasury has delegated his power of authorization to the Chief Counsel of Internal Revenue. Where the commencement of such an action

has not been authorized or sanctioned it is subject to dismissal. Civil actions commenced under this provision must be brought in the name of the United States and not an official thereof. Thus, the prescribed procedure requires two steps. The First step requires that, a civil action be authorized by the Secretary or his delegate. "Secretary", as defined in 26 USC Sec. 7701 means the Secretary of the Treasury. "Delegate", as defined in Sec, 7701 refers to one who is an employee of the Treasury Department securing his authority from the Secretary or by redelegation, directly or indirectly. **There is no evidence of compliance with the first step**. The Second step requires direction of the Attorney General or his delegate to commence the action. Sec. 7701 (a)(12) defines the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed." and the term Attorney General under Sec. 7701(a)(22) means the Attorney General of the United States. **There is no evidence of compliance with the second step**. But even if these requirements had been met, the Secretary's authority is limited by Congress under statutory law. Title 31 USC Sec. 301(a)(b) confirms the Secretary of the Treasury is appointed by the President and "approved" by the single legislative body of the Senate. It specifies the Secretary of the Treasury as the head of an Executive Department may prescribe regulations for the government of his department, his agency and his employees and not the general public, as the clear import of the language confirms. Title 5 Sec. 301 also specifies that the Secretary is the head of an Executive Department at the Seat of government (Washington D.C.), which is limited to the executive department by the separation of powers under Article II Sec. 1 of the Constitution and is also limited under Title 4 USC Sec. 71 to all territory of the United States included within the present limits of the District of Columbia. Title 4 USC Sec. 72 states, "All offices attached to the seat of government shall be exercised in the District of Columbia,

and not elsewhere, except as otherwise expressly provided by law." The Definition of "Employee" is found in Title 5 USC Sec. 2105(a) for the purpose of this title Employee means a specific officer or employee of the government and not a private citizen. Therefore, the Secretary has no authority over Sherwood who is not a government employee and does not reside in Washington D.C. This is confirmed by 2 Am Jur Sec. 152. General nature and basis of authority. It is fundamental law that the legislature can delegate to an administrative agency the power to make rules and regulations to implement a statute. Thus, the origin of the rulemaking capacity is the delegation from the legislature, not a constitutional grant of power to the executive and all rulemaking authority delegated to the administrative agencies is limited and defined by the statute conferring the power. Consequently, in the absence of valid statutory authority, an administrative agency may not, under the guise of a regulation, substitute its judgment for that of the legislature. An agency may not promulgate a regulation that adds a requirement that does not exist under the statute. An agency cannot create, remove, or limit substantive right granted in the enabling act and an agency cannot, without sufficient criteria expressed in the statute, vary the impact of a statute by restricting or limiting its operation through creating waivers or exemptions. The agency's Verified Petition (A-6) will not meet the statutory requirements to provide jurisdiction for Patel in this action because Title 26 USC has not been enacted into positive law, as proven by Title 1 Sec. 204(a); the 1994 Preface page of the United States Codes as signed by Speaker of the House of Representatives, Newt Gingrich (A-44); page III Titles of the United States Code (A-45) and even if Title 26 were enacted the agency has failed the requirement that for general application, statutes at large must be promulgated in the Federal Register, pursuant to Title 44 USC Sec. 1500 et seq. This process is conformed in Title 5 USC Sec. 552 et seq.; CFR, Chapter 1; and Title 26 CFR,

Part 601, all supporting the mandate for regulations to be published in the Federal Register before they have general application. The Parallel Table of Authorities (A-43) does not indicate the agency complied with these requirements but has instead attempted to rely upon implementing regulations of Title 27, which is a violation of 1 CFR Sec. 21.21(c)(2) where one agency is prohibited from using another agencies implementing regulations and is supported by case law in U.S. v. Mersky...neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction to the other. United States v. Mersky, 361 US 431, 4 L. Ed 2d 423, 80 S. Ct. 459. Patel failed to verify the agency summonses followed statutory procedures required to establish jurisdiction over "private citizen" Sherwood prior to issuing her Order (A-10). Although Revenue Agent Aguilera falsely stated in her Verified Petition (A-6) that the court had jurisdiction under Title 26 USC Sec. 7402, Patel was obligated to investigate the facts, and should have known there is no evidence of "instance" of the United States, and did know there was NO appropriate process (a complaint) (A-42) to grant jurisdiction to the court. But, even if the requirements of 7402 had been met it would not apply to "private citizen" Sherwood because there is NO Legislative Jurisdiction by the fact Title 26 USC has not been enacted into Positive Law as confirmed by Title 1 Sec. 204(a) and even then, there are no required listed implementing regulations indicated in the Parallel Tables of Authorities and Rules for Title 26 USC 7402. Therefore, there is NO authority or jurisdiction by any Statute at Large or implementing regulation published in the Federal Register pursuant to Title 44 USC Sec. 1501 et al. The Verified Petition (A-6) is further flawed by the statement, (Pg. 1 lines 25-27) "...authorized by the Secretary of the Treasury to perform the duties and take the action described in Sections 7602 and 7603", and by the fact the

Summonses (A-4 & 5) state on the back page that the Certificate of Service of Summons is pursuant to section 7603, Internal Revenue Code, which ONLY applies to Title 27 CFR Part 70 of Alcohol, Tobacco, and Firearms, as shown in the Parallel Tables of Authorities (A-43). The Verified Petition (A-6) is further flawed on page 1 lines 19 to 22 for jurisdiction under Title 26 USC Sections 7402 and 7604. Section 7402 and 7604 are not listed in the Parallel Table of Authorities and Rules (A-43) however, an examination of IRC 7604(b) Enforcement of Summons applies ONLY to IRC sections 6420 Gasoline used on farms; section 6421, Gasoline used for certain nonhighway purposes; section 6427, Fuels not used for taxable purposes, and nothing else. The fact that Patel issued the Order Enforcing Summonses (A-10) after being made aware by Sherwood's Opposition Response (A-9) that the Verified Petition (A-6) did not support jurisdictional requirements and informing Patel she had no jurisdiction. "A sanction may not be imposed or a substantive rule of order issued except within jurisdiction delegated to the agency and as authorized by law." Government Organization and Employees, Title 5 USC Sec. 558(b). 20 Am Jur Sec. 59 states,"...Jurisdiction is the power to decide erroneously as well as correctly. The distinction between lack of jurisdiction and any other error affecting a decision of a court is important, since when a court lacks jurisdiction its decision, right or wrong, is void and subject to collateral attack..." This is further supported by;

46 Am Jur 2d Sec. 82. Acts under invalid law or in excess of jurisdiction. Excess of jurisdiction, as distinguished from the entire absence of jurisdiction, means the act, although within the general power of the judge, is not authorized, and therefore void with respect to the particular case, because the conditions which alone authorized the exercise of the general power in that particular case are wanting, and hence the judicial power is not in fact lawfully invoked.

Where there is clearly no jurisdiction over the subject matter, any authority exercised is unsurped authority, and no excuse is permissible if the judge knows of his or her lack of authority. The law requires Proof of Jurisdiction to appear on the record of the administrative agency and all administrative proceedings. Jurisdiction is essentially the authority conferred by Congress to decide a given type of case one way or the other. Hagans v. Lavine, 415 U.S. 533 (1974). There is No valid proof of jurisdiction on the agency's record.

DUE PROCESS

Article VI Section 3 of the Constitution mandates that Patel, as a Federal District Judge is bound by her oath of office to ensure due process provisions of the Constitution. Patel denied due process when she failed to ensure compliance with legislative enacted statutes. Being creatures of the legislature, administrative agencies have no general, inherent, or common-law powers, but only those powers conferred upon them by the legislature. ...the source of the powers of administrative agencies lies in statutes, and administrative agencies must find within statutes warrant for the exercise of any authority which they claim.

Patel's failure to assure authorization from the Secretary of the Treasury pursuant to Title 26 USC Sec. 7401 coupled with the fact she knew there was NO Complaint (A-42) from the Attorney General pursuant to Sec. 7402(a) can only mean that Patel not only had no jurisdiction for her actions, but she intentionally violated due process requirements of the Constitution. Procedural due process is addressed in IRC Chapter 76, Judicial Proceedings. Sec. 7401 Authorization: No Civil Action for the collection or recovery of taxes, or for any fine, penalty, or forfeiture shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be

commenced. FRCP Rule 3 states, "A civil action is commenced by filing a complaint with the court." Patel knew, there was NO COMPLAINT as verified by her statement in the transcript (A-42 pg. 3 line 14), and Patel's position as a Federal Judge means she is expected to know her conduct violated statutory and Constitutional rights. Where an official could be expected to know that certain conduct would violate statutory or constitutional rights he (she) should be made to hesitate; and a person who suffers injury caused by such conduct may have cause of action. Pierson v. Ray, 386 U.S. 547 554 (1967). Patel was made aware of flaws in Aguilera's Verified Petition (A-6) Due process was further denied by Patel when she failed to require petitioner Aguilera to attend the Court Ordered Hearing for questions and responses by either Sherwood or the Patel Court to ensure the veracity of the petitioner's claim. Patel's Supplemental Order (A-11) is proof that Patel failed to review Sherwood's Opposition Response (A-9) submissions, further denying due process. Sherwood made no inventive argument (pg. 2 line 12) challenging the 16th Amendment authorization as claimed by Patel, but instead Sherwood relied on substantiate documentation, i.e., the Preface Page of all Titles of the U.S. Code, signed by Speaker of the House of Representatives, Newt Gingrich (A-44) and all Titles to the U.S. Codes under Title 1 Sec. 204(a) (A-45), and every presented exhibit supports the fact Title 26 has not been enacted into positive law, but rather than submit concrete evidence with reference to legislative enacted statutes to rebut Sherwood's claim, Patel dismissed Sherwood's evidence with unsubstantiated remarks (See jointly: Supplemental Order (A-11) and the Transcript (A-42 pg. 6 line 24 thur pg. 8 line 10). Patel is liable for her action of denying due process which contributes to the agency's abuse of power in supporting confiscation of Sherwood's property. Implications are condemning both to IRS and third parties who knowingly participate in IRS initiated scams: No legitimate authority

resides in or emanates from an office which was not legitimately created and/or ordained either by state or national constitutions or by legislative enactment. See variously, United States v. Germane, 99 U.S. 508 (1879), Norton v. Shelby County, 118 U.S. 425, 442, 6 S. Ct. 1121(1866), etc., dating to Pope v. Commissioner, 138 F. 2d 1006, 1009 (6th Cir. 1943).

16 Am Jur 2d Sec. 552. The Constitution provides that neither Congress nor the states may deprive any person of life, liberty or property without due process of law. Regulations governing IRS conduct are acknowledged and intended to preserve 5th Amendment assurances in Title 26 CFR Sec. 601.106(f)(1) Rule 1. An exaction by the U.S. Government which is not based on law, statutory or otherwise, is a taking of property without due process of law in violation of the 5th Amendment to the U.S. Constitution. Supreme Court Justice Blackmum stated in the matter Re: Harlow v. Fitzgerld. I agree with the substantive standard announced by the Court today, imposing liability when a public official defendant "knew or should have known" of the Constitutionally violate effect of his actions. This standard would not allow the official who actually knows that he was violating to escape liability for his actions, even if he could not "reasonably have been expected" to know what he actually did know. Thus the clever and unusually well-informed violator of Constitutional right will not evade just punishment for his crimes. I also agree that this standard applies "across the board", to all "government officials performing discretionary functions." Patel failed to cite the specific legislative enacted statutes that granted the agency authority and jurisdiction over "Private Citizen" petitioner Sherwood. Private Citizens have Private rights and the only legislative statutory authority enacted by Congress over Private Citizens is Sec. 7401 as found in Long v. Rasmsussen. The Revenue laws are a code or system in regulation of tax assessments and collection. They relate to

taxpayers, and not to non-taxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of the law. With them Congress does not assume to deal, and they are neither of the subject nor objects of the revenue law. Long v. Rasmsussen, 281 Fed. Rpt. 236 (1922). It is basic in our law that an administrative agency may act only within the area of jurisdiction marked out for it by law. If an individual does not come within the coverage of the particular agencies enabling legislation the agency is without power to take any action, which effects him. Edencott v. Perkins, 317 U.S. 501. The United States Constitution guarantees every citizen the right of due process in the 4th, 5th and 14th Amendments. In this instance due process requirements were avoided when respondent failed to follow the provisions of Section 7401 requiring a complaint to gain authority and jurisdiction over a private citizen. Patel cannot produce evidence that the petitioner has waived Constitutional Rights by a contract, made in a willing and definite manner, that compels performance, and there is No legal statutes enacted by Congress to provide jurisdiction for collection action by an administrative agency. 16 Am Jur 2d Sec. 439. Constitutional guarantees - Generally. Constitutional guarantees can not be imposed upon or destroyed under the guise or device of being regulated. Individual rights under our Constitution are immutable against all hostile legislation which is not required by consideration of public health or safety and if a law has no other purpose than to chill the assertion of fundamental Constitutional rights by penalizing those who chose to exercise them, then it is patently unconstitutional. The citizens of a free government are justly jealous of their constitutional rights and privileges and this should be attributed to them as a virtue rather than a fault. It keeps them on the alert and inspires them with the courage and determination in their efforts to resist the aggressions of

arbitrary power. It is just as obligatory upon the citizen to resist encroachments upon his rights and liberties guaranteed by the Constitution as it is for him to uphold and maintain its integrity. The right of property has been described as a fundamental right. It is not ex gratia from the legislature but ex debito from the Constitution. It existed before the Constitutions which protect it. It is sometimes characterized judicially as a sacred right, the protection of which is one of the most important objects of government. 16 Am Jur 2d Sec. 581. ...Property in the 14th Amendment embraces all valuable interests which a man may possess outside of himself. In applying the due process clause, differant kinds of property are not distinguished. 16 Am Jur 2d Sec. 583. Patel's Order (A-10) requiring Sherwood to appear and produce records is interests possessed by Sherwood for the convince of the administrative agency. Administrative convenience or necessity cannot override the requirement of due process as found in Russel-Newman Mfg. C. v. N.L.R.B. C.A. Tex. 1966 370 F. 2d 1980. Patel's Order violates due process, but even if Title 26 had been enacted into positive law Patel would still be required to follow due process. Where rights secured by the Constitution are involved there can be no rule making or legislation would abrogate them as found in Miranda v. Arizona, 384 U.S. 436 p. 491.
It is clear that if a statute is repugnant to the Constitution, it must be declared unconstitutional. Marbury v. Madison, 5 U.S. 137, 180 (1803).

Judicial Immunity

The key requirement for judicial immunity is clearly jurisdiction over the subject matter and since Patel has admitted there is no complaint (A-42) this is an admission the jurisdictional requirements of Sec. 7401 were not met, therefore Patel had no jurisdiction over the subject matter,

and absent said jurisdiction there can be no judicial immunity.

20 Am Jur 2d Sec. 59. ... when a court lacks jurisdiction its decision, right or wrong, is void and subject to collateral attack...
Officers of the court have no immunity from liability when violating a constitutional right and may be held personally liable for damages under 42 USC 1983, for they are deemed to know the law. Knowing that they will be liable for all injurious conduct creates incentives for officials to err on the side of protecting citizens constitutionally protected rights. When they violate the constitutionally protected rights, they do so at their own peril. Owen v. Independence, 100 S. Ct. 1398. 1980 (445 U.S., 622 L. Ed. 2d 673); Maine v.Thiboutot, 1980, 100 S. Ct. 2502, 448 U.S. 1, 65 L. Ed. 2d 555, Removes judicial immunity; Hafer v. Melo, 502 U.S. 2l, 1991.

46 Am Jur 2d Sec. 82. ...where there is clearly no jurisdiction over the subject matter, any authority exercised is unsurped authority, and no excuse is permissible if the judge knows of his or her lack of authority.

Supreme Court Justice Blackmum stated in the matter Re: Harlow v. Fitzgerld. I agree with the substantive standard announced by the Court today, imposing liability when a public official defendant "knew or should have known" of the Constitutionally violate effect of his actions. This standard would not allow the official who actually knows that he was violating to escape liability for his actions, even if he could not "reasonably have been expected" to know what he actually did know. Thus the clever and unusually well-informed violator of Constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies "across the board", to all "government official performing discretionary functions."

Is Patel immune from responding to Complaint.

The record indicates Patel failed to respond to the Complaint, although the United States District Court Summons (A-46) informs Patel an answer to the complaint must be made within 60 days after service of the summons and failure to do so will result in judgment by default for the relief demanded in the complaint. This is supported by the Federal Rules of Civil Procedure Rule 8(c), which state that a defendant must plead "any matter constituting an avoidance or affirmative defense". Patel failed to answer the Complaint and the record is void of any evidence of a pleaded defense or responsive pleading in any manner to the petitioner's Complaint.

Federal Rules of Civil Procedure Rule 8(b) Defenses: Form of Denials.A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the avertments upon which the adverse party relies.

Federal Rules of Civil Procedure Rule 8(d) Effect of Failure to Deny.Avertments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Sherwood is entitled to default in this action because Patel failed to respond to the complaint and furthermore, her failure to respond can only be construed as an admission that she knew she lacked jurisdiction, therefore she is liable for her actions.

Judge Wilken Acting As Attorney

The failure of Judge Patel to respond, plead or answer the complaint is an absence of a responsive pleading and the fact that Judge Wilken defended Judge Patel by failing to consider Sherwood's claims and denying motions can only mean that Judge Wilken was acting as an attorney from the

bench in violation of Title 28 Section 454. The record is void of evidence that anyone other than Judge Wilken offered any defense for the respondent. A letter from Assistant U.S. Attorney S. Kamlet (A-22) offering advise to Sherwood went unanswered when Sherwood inquired by letter (A-23) if she (Kamlet) was Patel's Attorney of Record.FRCP Rule 8(c) state that a defendant must plead "any matter constituting an avoidance or affirmative defense", and the summons (A-46) informs the defendant ,"an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this court within a reasonable period of time after service. If the respondent answered the Complaint with a claim of immunity the District Court could most certainly make a ruling based on a defense of immunity, but Patel failed to plead and in the absence of a pleading the petitioner requested a default (A-15) which also was unanswered by Patel, and default should have been granted unopposed, except Judge Wilken supported Patel with arguments from the bench and denied Sherwood's Motion with her Order Denying Plaintiff's Motion for Default Judgment (A-19) thereby acting as an Attorney from the Bench. Examination of the fact that Judge Wilken failed to consider Sherwood's Complaint (A-13) coupled with his compliance with Judge Wilken's Order Setting Case Management Conference (A-14) along with his letter of response (A-16) and Case Management Statement (A-17) all of which resulted in Wilken's' Order Continuing Case Management Conference (A-18) and her disregard for the fact that Patel failed to supply any factual basis for a meritorious defense as pointed out to Wilken in Plaintiff's Motion to Vacate Order Continuing Case Management Conference (A-20) and Plaintiff's Motion to Vacate Order Denying Plaintiff's Motion for Default Judgment (A-21) along with Plaintiff's Motion for

Leave to File a Motion for Reconsideration (A-24) which was denied by Wilken's Order Denying Plaintiff's Motion for Leave to File A Motion for Reconsideration (A-25) and the court's Order of Dismissal (A-26) is evidence that Judge Wilken acted as an Attorney from the Bench and was attempting to protect fellow judge Patel by failing to consider Sherwood's arguments in his Plaintiff's Objection to Court's Order of Dismissal (A-27) with her Order Reaffirming Dismissal of Case (A-28). Consideration to the above listed decisions by Wilken to unopposed arguments submitted by Sherwood can only result in one conclusion, Judge Wilken acted as an Attorney from the Bench in violation Of Title 28 USC Sec. 454.

CONCLUSION

Sherwood cannot stress more strongly for this Court the magnitude of the injustice that will take place not only to him but to the American people if this decision is allowed to stand without ever an opportunity for review by the Supreme Court. The statutory requirements for jurisdiction must be upheld but more importantly the preservation of Constitutional due process outweighs any considerations of legislative enacted statutes, government orders, or administrative agency regulations and Petitioner Raymond B. Sherwood respectfully requests this Court to grant certiorari and fully review the issues raised herein.
Dated this 10th day of May, 1999.

RESPECTFULLY SUBMITTED:

Raymond B. Sherwood
1612 Merian Dr.
Pleasant Hill, Calif. 94523
Pro Per

Supreme Court, U.S.
FILED

99 2 46 MAR 1 - 1999

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October 1998 Term

Raymond B. Sherwood

Petitioner,

v.

Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDEX I

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

No.

==========

IN THE

SUPREME COURT OF THE UNITED STATES

October 1998 Term

Raymond B. Sherwood

Petitioner,

v.

Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDEX I

Dated: February 26, 1999

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWOOD No. C 97-02796 CW

Plaintiff, ORDER OF DISMISSAL

v.

MARILYN HALL PATEL, Judge

Defendant.

On October 31,1997, the Court issued an Order continuing Case Management Conference wherein the Case Management Conference previously set for October 31, 1997, was continued to Janurary 9, 1998 at 1:30 p.m. On January 9,1998, a Case Management Conference was held. Sue Kamlet, Assistant U.S. Attorney, specially appeared on behalf of the Defendant. No appearance was made by or on behalf of the Plantiff. Accordingly,

IT IS HEREBY ORDERED that the above captioned action is DISMISSED for failure to prosecute

Dated: Jan 11 1988 signed Claudia Wilken

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWOOD

Plaintiff,

v.

MARILYN HALL PATEL, Judge

Defendant.

/

No. C 97-02796 CW

ORDER REAFFIRMING DISMISSAL OF CASE

Plaintiff objects to the Court's Order of Dismissal entered on January 18, 1998 and requests that it be set aside. In that Order the Court dismissed this case for failure to prosecute when Plaintiff failed to attend the Case Management Conference held on January 9, 1998. Plaintiff states that he did not attend the January 9 Case Management Conference because he had received a telephone message from the Court advising him that it had been rescheduled to January 16, 1998. Plaintiff states that he subsequently received written notice from the Court vacating the Case Management Conference scheduled for January 16. Plaintiff is incorrect. However, even if he were correct, this case was properly dismissed. As explained in the Court's Order Denying Plaintiff's

Motion for Default Judgment, Defendant Judge Marilyn Hall Patel is protected from lawsuits by absolute judicial immunity. Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996), cert. denied, 117 S. Ct. 963 (1997). Judicial immunity applies even when the judge acts erroneously, or in excess of judicial authority or the act is injurious to the plaintiff. Id. at 1244.

Plaintiff continues to contend that he is suing Judge Patel in her individual capacity, not in her official capacity as a judge. However, as explained in the Order Denying Plaintiff's Motion for Default Judgment, Judge Patel was acting in her official capacity as a judge when she issued the order to show cause which is the subject of Plaintiffs complaint. Judge Patel is immune from Plaintiff's civil suit for damages because it is based upon her judicial actions.

Because Plaintiff has failed to state a justiciable claim against Judge Patel, this case was properly dismissed.

CONCLUSION

For the foregoing reasons, the Court overrules Plaintiff's objection to the Court's Order of Dismissal and reaffirms dismissal of this

case. The clerk shall close the file and no more filings shall be received in this closed docket.

IT IS SO ORDERED.

Dated Mar 10 1998

Signed Claudia Wilken
United States District Judge

(NOT FOR PUBLICATION)
UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND BAILEY SHERWOOD, Plaintiff-Appellant, v. MARILYN HALL PATEL, Defendant-Appellee.	No. 98-15496 D.C.No. CV-97-02796-CW MEMORANDUM

Appeal from the United States District Court for the Northern Division of California Claudia Wilken, District Judge, Presiding

Before: HUG, Chief Judge, SCHROEDER and KOZINSKI, Circuit Judges.

Raymond Bailey Sherwood appeals pro se the district court's order reaffirming its dismissal of his action against District Court Judge Patel. Sherwood seeks damages arising when Judge Patel issued an order to show cause in an action involving Sherwood and the Internal Revenue Service. We agree with the district court, that Judge Patel was entitled to judicial immunity because she was acting within her official capacity as a judge when she issued the order. See Moore v. Brewster, 96 F.3d 1240, 1243, 1243-44 (9th Cir. 1996).

AFFIRMED

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAYMOND BAELEY SHERWOOD, Plaintiff-Appellant, v. MARILYN HALL PATEL, Defendant-Appellee.	No. 98-15496 DC# CV-97-02796-CW Northen California (Oakland) ORDER

Before: Chief Judge Hug, Schroeder, Kozinski, Circuit Judges

The petition for rehearing is denied.

Summons

Collection Information Statement

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1989, Dec. 31. 1990, Dec. 31, 1991. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS)officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks,

savings accounts passbooks, records or certificates of deposit for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to : all bank statements, checkbooks, canceled checks, savings account passbooks,, records, or certificates of deposit for the period From Jan 1, 1995 to Jan 15, 2006. Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes, and judgments receivable, and all current life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Place and time for appearance: At 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 o'clock A.M.

Issued under authority of the Internal Revenue Code this 7th day of February 1996. Signed F. Aguilera Revenue Officer.

A-5 cont.

Summons

Income Tax Return

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1994. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding income you received for the years 1994. These records and documents include, but are not limited to: Forms W-2 (Wage and Tax Statement), Forms 1099 for interest and dividend income, employee earnings statements, and records of deposit with banks or other financial institutions. Also include all other books, records, documents, and receipts for income from, but not limited

to the following sources: wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state, or local tax refunds, annuities, life insurance policies, endowment contracts, pensions, estates, trusts, discharge of indebtedness, distributive shares of partnership income, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money). Including all documents and records about any income you assigned to any other person or enity. IRS will use this information to prepare a federal income tax return for the following year(s) when you don't file a return. 1994. We have attached a blank return to guide you in producing the necessary documents and records. Business address and telephone number of Internal Revenue Service officer named above. 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598. Place and time for appearance: At 185 Lennon Lane, Ste. 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 A.M.

Issued under the authority of the Internal Revenue Code this 9th day of February , 1996. Signed F. Aguilera, Revenue Officer.

MICHAEL J. YAMAGUCHI (California State Bar No. 84984)

United States Attorney

JAY R. WEILL (California State Bar No. 75434)

Assistant United States Attorney, Chief, Tax Division

DAVID L. DENIER (California State Bar No. 95024.)

Assistant United States Attorney ,10th Floor Federal Building

450 Golden Gate Avenue, Box 36055

San Francisco, California 94102, Telephone: (415) 436-6888

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service, Petitioners, v. RAYMOND B. SHERWOOD, Respondent.	**VERIFIED PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONSERS**

Petitioners, the **UNITED STATES OF AMERICA** and its Revenue Officer, **FRANCESCA AGUILERA,** allege and petition as follows:

1. This proceeding is brought and this Court has jurisdiction hereof under Sections 7402(b) and 7604(a) of the Internal Revenue Code (26 U.S.C. Sec. 7402 and 7604).

2. Petitioner **FRANCESCA AGUILERA** is and at all times mentioned herein was an employee and officer of the Internal Revenue Service of the United States Department of the Treasury authorized by the Secretary of the Treasury to perform the duties and take the actions described in Sections 7602 and 7603 of the Internal Revenue Code (26 U.S.C. 7602 and 7603), under Treasury Regulations 301.7602-1 and 301-7603-1 (26 C.F.R. _ 301.7602-1 and 301.7603-1).

3. Petitioner FRANCESCA AGUILERA is and at all times mentioned herein was attempting in the course of her authorized duties to collect certain unpaid federal tax liabilities of RAYMOND B. Sherwood for the years ending December 31, 1989, December 31, 1990 and December 31, 1991.

4. Petitioner FRANCESCA AGUILERA is and at all times mentioned herein was attempting in the course of her authorized duties to have respondent produce for inspection, examination and copying by petitioner certain records possessed by respondent which are relevant and material to her attempt to collect the aforementioned federal tax

liabilities of RAYMOND B. SHERWOOD, for the periods stated in paragraph 3 above.

5. Petitioner FRANCESCA AGUILERA is and all times mentioned herein was attempting in the course of her authorized duties to determine the correct federal income tax liability of RAYMOND B. SHERWOOD for the taxable year 1994.

6. Petitioner FRANCESCA AGUILERA is and all times mentioned herein was attempting in the course of her authorized duties to have respondent produce for inspection, examination and copying by petitioner certain records possessed by respondent which are relevant and material to her attempt to determine the aforementioned federal tax liability of RAYMOND B. SHERWOOD for the period stated in paragraph 5 above.

7. Respondent RAYMOND B. SHERWOOD's last known address in 1612 Merian Drive, Pleasant Hill, California, 94523 which is within the venue of this Court.

8. Petitioner FRANCESCA AGUILERA is informed and believes that said respondent is in possession and control of testimony, books, records, papers and other data covered by said petitioner's inquiries and to which petitioners do not otherwise have access, possession, or control.

A-7 cont.

9. On February 7, 1996, petitioner FRANCESCA AGUILERA served a summons on said respondent in respect to the subject matter described in paragraphs 3, 4, and 8 above, by leaving an attested copy of the summons at respondent's last known address as described in paragraph 7 above. The requirements of said summons are self-explanatory, and a true copy thereof is attached hereto as EXHIBIT A and is hereby incorporated by reference as a part of this petition.

10. On February 7, 1996, petitioner FRANCESCA AGUILERA served a summons on said respondent in respect to the subject matter described in paragraphs 5, 6 and 8 above, by leaving an attested copy of the summons at respondent's last known address as described in paragraph 7 above. The requirements of said summons are self-explanatory and a true copy thereof is attached hereto as Exhibit B and is hereby incorporated by reference as part of this petition.

11. The items sought by the summons described in paragraph 9 above are relevant to and can reasonably be expected to assist in the collection of the above-mentioned federal tax liabilities of RAYMOND B. SHERWOOD for the years stated in paragraph 3 above. it was and now is essential to completion of petitioner's inquiry regarding the financial information of respondent that respondent produce the items demanded

by said summons.

12. The items sought by the summons described in paragraph 10 above are relevant to and can reasonable be expected to assist in the determination of the above-mentioned federal tax liability of RAYMOND B. SHERWOOD for the year stated in paragraph 5 above. It was and now is essential to completion of petitioner's inquiry that respondent produce the items demanded by said summons.

13. The respondent did not appear on February 21, 1996, as requested in the summonses.

WHEREFORE, having stated in full its petition against the respondents, petitioners pray for enforcement of the subject summonses as alleged and set forth above as follows:

A. That the named respondent herein be ordered to appear and show cause before this Court, if any, why he should not be compelled by this Court under 26 U.S.C. 5 7604(a) to give such testimony and to produce such items as are required in the herein above-described summonses;

B. That respondent be ordered by the Court to appear before the petitioner FRANCESCA AGUILERA, or any other designated agent, at a time and place directed by the Court and then and there give such

testimony and produce such items as is required by the summonses; and

C. That the Court grant the petitioner UNITED STATES OF AMERICA its costs in this proceeding and such other and further relief as may be necessary and proper.

MICHAEL J. YAMAGUCHI, United States Attorney

DAVID L. DENIER, Assistant United States Attorney

Tax Division

VERIFICATION

I, FRANCESCA AGUILERA, pursuant to 28 U.S.C. 1746, declare and states as follows:

I am a duly employed revenue officer in the Walnut Creek, California office of the Internal Revenue Service of the United States Treasury Department. I am one of the petitioners making the foregoing petition. I have read and know the entire contents of the foregoing petition, and all statements of fact contained in said petition are true to the best of my own personal knowledge and recollection, and as to those facts stated upon information and belief, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on (unreadable), 1996 at Walnut Creek, California.

Signed Francesca Aguilera

FRANCESCA AGUILERA

Summons

Collection Information Statement

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1989, Dec. 31. 1990, Dec. 31, 1991. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS)officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks,

savings accounts passbooks, records or certificates of deposit for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to : all bank statements, checkbooks, canceled checks, savings account passbooks,, records, or certificates of deposit for the period From Jan 1, 1995 to Jan 15, 2006. Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes, and judgments receivable, and all current life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Place and time for appearance: At 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 o'clock A.M.

Issued under authority of the Internal Revenue Code this 7th day of February 1996. Signed F. Aguilera Revenue Officer.

A-7 EXHIBIT A cont.

Summons

Income Tax Return

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1994. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding income you received for the years 1994. These records and documents include, but are not limited to: Forms W-2 (Wage and Tax Statement), Forms 1099 for interest and dividend income, employee earnings statements, and records of deposit with banks or other financial institutions. Also include all other books, records, documents, and receipts for income from, but not limited.

A-7 EXHIBIT B

to the following sources: wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state, or local tax refunds, annuities, life insurance policies, endowment contracts, pensions, estates, trusts, discharge of indebtedness, distributive shares of partnership income, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money). Including all documents and records about any income you assigned to any other person or enity. IRS will use this information to prepare a federal income tax return for the following year(s) when you don't file a return. 1994. We have attached a blank return to guide you in producing the necessary documents and records. Business address and telephone number of Internal Revenue Service officer named above. 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598. Place and time for appearance: At 185 Lennon Lane, Ste. 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 A.M.

Issued under the authority of the Internal Revenue Code this 9th day of February , 1996. Signed F. Aguilera, Revenue Officer.

A-7 EXHIBIT B cont.

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRIRCT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer Petitioners, v. RAYMOND B. SHERWOOD, Respondent.	NO. C 96-1828 MHP ORDER TO SHOW CAUSE RE ENFORCEMENT OF INTERNAL REVENUE SERVICE SUMMONSES

Good cause having been shown by the petitioners upon their petition filed in the above-entitled proceeding on May 16, 1996 1996, it is hereby:

ORDERED that respondent RAYMOND B. SHERWOOD appear in person or by his authorized representative, before this Court on the 26th day of July, 1996, at 10:30 in Courtroom No. 11, 19TH Floor, United States Courthouse, 450 Golden Gate Avenue, San Fransico, California, and then and there show cause, if any, he has, why he should not be compelled to appear and testify an produce books, records and other documents as commanded by the summonses heretofore served upon him as alleged and set forth in particular in said petition; and it is further.ORDERED that a certified copy of this Order to Show Cause,

together with a copy of the aforesaid petition, be served upon said respondent in accordance with Rule 4 of the Federal Rules of Civil Procedure at least thirty-five (35) days before the return date of this Order above specified; and it is further

ORDERED that at least twenty-one (21) days before the return date of this Order, respondent may file and serve a written response to the petition, supported by appropriate affidavits or declarations in conformance with 28 U.S.C. 1746, as well as any motions it desires to make, that the petitioners may file and serve a written reply to such response, if any, at least fourteen (14) days before the return date of this Order; that all motions and issues raised by the pleadings will be considered on the return date of this Order, and only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavits or declarations will be considered at the return of this Order, and any uncontested allegation in the petition will be considered admitted.

ORDERED this 23rd day of May, 1996, at San Francisco, California.

signed Marilyn Hall Patel

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Case No. C 96-1828

ORDER SETTING CONFERENCE

In accordance with Civ. L.R. 16-4, lead trial counsel will try this case are directed to confer in advance of the Case Management/Status Conference with respect to all matters contained in the attached Proposed Joint Case Management Order and all other matters described in Rule 16(a), (b) and (c) and Civ. L.R. 16-8(b). Counsel shall complete the attached Order and file same not less than ten (10) days in advance of the Conference set for 8/16/96 at 9:30 a.m. If additional space is needed, please attach a separate sheet. Plaintiff's counsel shall bear the responsibility for convening all counsel and completing and filing the order.

Each party shall be represented at the Scheduling Conference by the lead counsel who will try the case and be prepared to discuss all matters referred to in the preceding paragraph. Counsel shall have authority to enter stipulations and make admissions regarding all matters described herein.

PLAINTIFF IS DIRECTED TO SERVE COPIES OF THIS ORDER AT ONCE UPON ALL PARTIES IN THIS ACTION AND UPON THOSE SUBSEQUENTLY JOINED IN ACCORDANCE WITH THE

PROVISIONS OF RULES 4 AND 5, FEDERAL RULES OF CIVIL PROCEDURE AND CIV. L.R. 4 AND 5, and to file with the Clerk of the Court a Certificate reflecting such service.

Counsels' appearance at the Scheduling Conference may be excused by leave of court (a phone request to the Courtroom Deputy is necessary) if this matter has been referred to Arbitration, in which case the attached order shall be filed and shall set forth the arbitration status of the case including the date scheduled for hearing, if any has been set, and the continuances which have been granted.

Case Management Conferences and other nondispositive matters may be heard by telephone, if all the parties agree and with approval of the court. Counsel should advise the Courtroom Deputy ten (10) days in advance of the scheduled hearing date of this preference.

MOTIONS TO DISMISS SHALL NOT BE FILED BEFORE THE INITIAL CASE MANAGEMENT CONFERENCE EXCEPT BY LEAVE OF COURT.

*** FAILURE TO COMPLY WITH THIS ORDER or the provisions of Fed. R. Civ. P. 16 may be deemed sufficient grounds for dismissal of this cause, default or other appropriate sanctions. (See Rule 16(f)).

Signed MARILYN HALL PATEL
United States District Judge

A-9 cont.

RAYMOND B. SHERWOOD, SUI JURIS
1612 MERIAN DR.
PLEASANT HILL, CALIFORNIA 94523
(510) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service Petitioners, v. RAYMOND B. SHERWOOD Respondent.	Case No. C 96 1828 MHP OPPOSITION RESPONSE , TO VERIFIED PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONSES; MOTION TO DISMISS

Now comes Raymond B. Sherwood, respondent in the above-entitled proceeding by counsel David L. Denier, and moves the Court to dismiss with prejudice, the Order to Show Cause on the ground. that there is no jurisdiction for this action; there is abuse of process; and defects in the summons.

Rule 12 of the Federal Rules of Civil Procedure governs that an objection may consist of an absence of a jurisdictional basis, of some defect in the summons, or of insufficient service. Rule l2(b) covers all of them under one or the other of its clauses numbered (2),(4), and (5).

This COURT ORDER is flawed by the fact that an order to show cause is

not authorized by the Federal Rules of Civil Procedure.

"Rule 7(b) provides that all applications to the court for orders shall be by motion. The federal rules and the forms clearly indicate that motions are brought before the court by means of a "notice of motion," which serves the purpose of a rule to show cause and obviates the necessity for obtaining such a rule. U.S. v. Rollnick, D.C.Pa. 1940, 33 F-Supp. 863. Resort to a rule to show cause offends the terminology adopted by the civil rules. Rosenberg v. Hano & Co., D.C.Pa. 1938, 26 F.Supp. 160

This Court has made no short and plain statement of the grounds upon which the Courts jurisdiction depends, in conformity with Fed. R. Civ.P. 8(a), and L.R. 204. (Allegations of Jurisdiction). Fed. R. Civ.P. Rule 11; the signer is certifying that he actually has read the document.

The court observed in Zaldivar v. City of Los Angeles, C.A. 9th, 1986, 780 F.2d 823, 830 (Wiggins, J.) that: (t)he Rule admits of no exceptions to the requirement that all reasonable attorneys will read a document before filing it in court. In practical effect, an obviously meritorious paper will go unchallenged, whether read or not. The force of the rule is to eliminate the defense of personal ignorance of defects in a paper challenged as unmeritorious.

This Court has ruled and issued an order without subject matter, personal, legislative, or constitutional jurisdiction.

NO SUBJECT MATTER JURISDICTION

There is no subject matter jurisdiction without an Act of Congress (a

statute) to actually confer the jurisdiction on a district court, and the presence of subject matter jurisdiction, usually with a citation of the jurisdiction-conferring statute, must be demonstrated in every case. There is no evidence of Authority from the Secretary pursuant to IRC Section 7401.

IRC 7401 is "jurisdictional" as held in United States v. Ernist Sims, 355 F. Supp. 513 (1973): "Internal Revenue Code provision that civil action may not be commenced unless Secretary of Treasury or his delegate authorizes or sanctions it and the Attorney General or his delegate directs that it be commenced, is jurisdictional.', And; "This Court holds that 26 U.S.C. S 7401 requirements constitute facts essential to jurisdiction. The failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action. This Court erred in hearing the case on the merits and now determines such hearing was a nullity and not amenable to effective order or judgment, except the order now made that this Court does not have jurisdiction over the subject matter."

"Thus, the prescribed procedure requires two steps. First, that a civil action be authorized by the Secretary or his delegate. "Secretary" as defined in 26 U.S.C. S 7701 means the Secretary of the Treasury. "Delegate" as defined in 26 U.S.C. 7701 refers to one who is an employee of the Treasury Department securing his authority from the Secretary or by redelegation, directly or indirectly. The second step requires direction of the Attorney General or his delegate to commence

the action. Under 26 U.S.C.A. 5 7701(a)(12) "the term 'or his delegate' when used in connection with any other official of the United States shall be similarly construed". The term "Attorney General" means the Attorney General of the United States. 26 U.S.C. 7701(a)(22)."

"[1, 2] This Court finds no rational means to avoid the conclusion that the requirements of 26 U.S.C. 7401 are jurisdictional."

NO PERSONAL JURISDICTION

Respondent is a private citizen who has made no contract with the Secretary of the Treasury to manufacture, sell, or distribute alcohol, tobacco, or firearms, and is not employed by or have a contract with the United States government under any provision of the Uniform Commercial Code, admiralty, or other laws.

NO LEGISLATIVE JURISDICTION

There is no LEGISLATIVE JURISDICTION by the fact Title 26 USC Internal Revenue Code has never been enacted into law, and is not legal evidence of law, as confirmed by ISSUE OF LAW in Title 1 USC 204(a) et seq.

Title 1 USC S 204. Codes and Supplements as evidence of the Laws of United Sates and District of Columbia; citation of Codes and Supplements

(a) United States Code.-The matter set forth in the edition of the Code of Laws of the United States current at the time shall, together with

the then current supplement, if any, establish prima facie the laws of the United States,.....

"The United States Code is only a prima facie statement of the statute law, and statutes collected in it do not change their meaning nor acquire any new force by their inclusion and if construction is necessary, recourse must be had to the original statutes themselves." *Murrell v. W. U. Tel. Co., C.C.A. Fla.1947, 160 F.2d 787:*

There are no statutes at large to support any claims and the only implementing regulations shown in the Parallel Tables of Authorities and Rules for IR Codes sections cited flow from Title 27 CFR Alcohol, Tobacco, and Firearms as shown below:

IRC Sec.	CFR (Implementing regulations)
7401	27 Part 70
7402	None listed
7602	27 Part 1702, 2963
7603	27 Part 701

Bureau of Alcohol, Tobacco and Firearms, Treasury 127 CFR Part 70 - PROCEDURE AND ADMINISTRATION

SUBCHAPTER M --ALCOHOL, TOBACCO AND OTHER EXCISE TAXES [2]27 CFR Part 170 MISCELLANEOUS REGULATIONS RELATING TO LIQUOR [3]27 CFR Part 296 MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES.

There has been no authority or jurisdiction by any Statute at Large or implementing regulation that was published in the Federal Register pursuant to 44 USC 5 1501 et al. (See *California Bankers v. Schultz 416 US 21,* "we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone.")

NO CONSTITUTIONAL JURISDICTION

The United States Government and/or the Internal Revenue Service has no authority or jurisdiction over Respondent or Respondent's property pursuant to Article I Section 8 Clause 17 of the United States Constitution, that provides such authority ONLY over places purchased by the consent of the legislature of the state in which the same shall be. for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. None of Respondent's property is located in a federal enclave or federal regulated area, nor is Respondent an officer, employee, or elected official of the United States, the District of Columbia, or any agency or instrumentality thereof, nor is Respondent employed by the United States Government.

California Government Code Article 2 Territorial Jurisdiction Sec. 110. Extent of State sovereignty and jurisdiction. The sovereignty and jurisdiction of this State extends to all places within its boundaries as

established by the constitution. The extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States is qualified by the terms of the cession or the laws under which the purchase or condemnation is made. (Enacted 1943) United States and State of California are two separate sovereignties, each dominant within its own sphere. Reading v. Los Angeles (1947) 81 CA2d 888, 185 P2d 430, app dismd 334 US 825, 92 L Ed 1754, 68 S Ct 1338.

Response to Petitioners Paragraph 1.

1. Respondent challenges Petitioner Francesca Aguilera's claim that this Court has jurisdiction, for the following reasons;

a. No evidence of authorization from the Secretary of the Treasury and the Attorney General as required by section 7401.

b. Authorization for sections 7402(b) and 7604(a) must rely upon S 7401.

c. Petitioner Francesca Aguilera has wrongfully applied their administrative procedures under Sections 7402 and 7604 by the fact that the implementing regulations for Sections 7402 and 7604 are under 27 CFR, Alcohol, Tobacco and Firearms relating to excise taxes (as referred to above) and NOT Title 26 CFR, income tax.

The IRS must proceed via the United States Attorney as confirmed in Origin and Authorization at 6-3.111 of the United States Attorneys' Manual Title 6 -- Tax Division, where it states that actions to collect taxes

on behalf of the government originate by a request and authorization from a delegate of the Secretary of the Treasury pursuant to Section 7401. Administrative Procedure Act, Title 5 USC further mandates at 556(d): "Except as otherwise provided by statute the proponent of a rule or order has the burden of proof ... A sanction may not be imposed or rule or order issued except on consideration of the whole record or those Parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence ... A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

Therefore, absent the verified authorization by the Secretary of the Treasury or his delegate for a civil action under the direction of the Attorney General or his delegate, and by the fact that the cited sections are under the authority of Title 27, Alcohol, Tobacco and Firearms and not Title 26, (Income Tax), there can be no Jurisdiction for this action.

Response to Petitioners Paragraph 2.

2. Respondent challenges the validity of the petitioner's claim of authority from the Secretary of the Treasury to perform the duties and take actions described in Sections 7602 (Exhibit 3) and 7603 (Exhibit 4) as stated by Revenue Officer Fracesca Aguilera in her verification. The Parallel Tables of Authority (Exhibit 1) clearly indicate that Section 7602 is under Title 27 Parts 170 & 296 (Exhibit 2) which is

related to Alcohol, Tobacco and Firearms and Not Title 26 (Income Tax). Petitioner Francesca Aguilera admits she is a Revenue Officer of the Internal Revenue Service and makes no mention in her VERIFIED PETITION of being an agent of the Bureau of Alcohol, Tobacco and Firearms and thusly cannot possibly have the authority she claims in her Verified Petition. Petitioner misrepresented 301.7602-1 and 301.7603-1 as "Treasury" regulations when in fact they are CFR 26 "Internal Revenue."

Response to Petitioners Paragraph 3.

3. Petitioner Francesca Aguilera admits she was attempting to collect certain alleged unpaid federal tax liabilities for the years 1989, 1990, and 1991, but she was without authority to do so (see Para. 2 above) and she is NOW seeking the records to substantiate the illegal collection action she initiated against the Respondent in September 1995 (Exhibit 5), obviously, without substantiating documentation on which to base her claim, even if she possessed the alleged delegated Authority for her action. This raises the question of "on what subject matter did she base her claim of liability" for the years in question. There has been no assessment records, Notices of Deficiency or, any processes required by the administrative procedures of the Internal Revenue Service to initiate any collection action in this matter. Petitioner has failed to establish any administrative authority or jurisdiction over Respondent.

Response to Petitioners Paragraph 4.

4. Petitioner Francesca Aguilera admits she was attempting in the course of her (alleged] authorized duties, to obtain records which are relevant and material to her attempt to collect tax liabilities but she failed to obtain the required information PRIOR to initiating collection action. Petitioner Francesca Aguilera was, and is, at this time, illegally engaged in collection by Wage Levy against Respondents Wife's employer Montgomery Ward (Exhibit 6), in violation of 28 USC Sec. 3102(a), 3203, and 3104 with respect to levy on earnings being excluded and excepted from garnishment. Francesca Aguilera has also levied Respondent's retirement account at Transamerica Occidental (Exhibit 7) in violation of IRC Section 401(a)(13) and Treasury Regulation Section 1.4011(a)-13(b)(2)(i) which states, "... that benefits provided under the plan may not be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, levy, execution or other legal or equitable process."

The levy against the protected retirement account was initiated in conspiracy with C. Roper, Acting Chief FBI (Exhibit 7). A prudent person has to conclude that this entire collection action has been initiated without the papers, records and data to establish a liability against the Respondent because if the Petitioner had the papers, records and data to establish a liability, she certainly would not need to summons papers, records, and data at this time.

A-10 cont.

Response to Petitioners Paragraph 5.

5. Petitioner Francesca Aguilera again admits that she was attempting to determine the correct federal income tax liability of Petitioner but she has failed to provide any evidence to establish authority or jurisdiction over Respondent which would compel Respondent to produce records or information. Petitioner's action is an attempt to violate Respondents rights under the 4th and 5th Amendment of the Constitution. Furthermore; Respondent attempted an inquiry under CFR Section 601.201 Rulings and Determination letters, which reads:

(a) General practice and definitions.

(1) It is the practice of the Internal Revenue Service to answer inquires of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and as to the tax affects of their acts or transactions. District Directors apply the statutes, regulations, Revenue Rulings, and other precedents published in the Internal Revenue Bulletin in the determination of tax liability, the collection of taxes, and the issuance of determination letters in answer to taxpayer's inquiries or requests.

Respondent requested a Determination letter from District Director Michael S. Bigelow (Exhibit 8) and from District Director Gerald F. Swanson (Exhibit 9) in an attempt to establish a determination. The presumption must hold that Respondent has no obligation or liability when

the District Directors failed to respond to legitimate inquiries required by Section 601.201.

Response to Petitioners Paragraph 6.

6. Petitioner Francesca Aguilera sent a frivolous Summons that failed to meet the requirements of 7402(b) to obtain jurisdiction of the federal courts by "appropriate process" and further, failed to observe 7402(f), general jurisdiction, for civil action involving internal revenue pursuant to 1340 of title 28 USC.

There was no Seal of the Court or a signature of a duly elected or appointed Judge, as required by statutes. Petitioner also conveniently fails to admit that the Respondent replied to her Summons of Feb. 7, 1996 with a PETITION TO QUASH, (Exhibit 10) since no court was identified as required by S 7604 for "appropriate process", and as of this time, the Petitioner has failed to respond.

Petitioner Francesca Aguilera, who with intent to defeat the application of any provision of this title (26 USC) failed to perform any of the duties of her office or employment (Sec. 7214(3)), did initiate a fraudulent summons that was blatantly flawed by the fact that IRC 7604(b) Enforcement of Summons applies *ONLY* to IRC sections 6420(e)(2), 6421(g)(2), 6427(i)(2) and 7602, which is not relevant or material to this instant action. These cited sections are:

6420 Gasoline used on farms;

6421 Gasoline used for certain non-highway purposes;

6427 Fuels not used for taxable purposes.

In each of these sections the laws for the examination of books and witnesses is *ONLY* applicable to these particular cited sections as they relate to retail excise taxes and imposition of tax on petroleum products; and it is *ONLY* for the purpose of ascertaining the correctness of any claim under these cited sections that the Secretary **SHALL** have the authority granted by paragraphs (1), (2), and (3) of section 7602 as it relates to Title 27 CFR, Alcohol, Tobacco, and Firearms, as shown in the Parallel Tables of Authorities for the implementing regulations. Certificate of Service signed by the person serving, Dorothy Mays, Revenue Officer aide, - SHALL be evidence of the facts it states on application for enforcement of the summons, and **SHALL** be served by the Secretary, by an attested copy when no tangible evidence exists that an application was made by "appropriate process" as cited in 7402(b) and 7604.

Furthermore the Certificate of Service of the Summons, includes a notation under the heading: "Pursuant to section 7603, Internal Revenue Code", which only applies to Title 27 CFR Part 70 of Alcohol, Tobacco, and Firearms, as shown in the Parallel Tables of Authorities for the implementing regulations, and not CFR 26 Internal Revenue.

The judicial device for enforcing the administrative summons is provided by IRC 7402(b) and 7604. The Parallel Tables of Authorities and Rules for IR Codes sections cited show that the implementing regulations for

7604 flow from Title 27 CFR Alcohol, Tobacco, and Firearms and 7402 have none listed.

Response to Petitioners Paragraph 7.

7. Uncontested

Response to Petitioners Paragraph 8.

8. Petitioner Francesca Aguilera states that she is informed but fails to state her source of information, along with when and how she obtained said information and how Petitioner Francesca Aguilera came to believe that Respondent is in control of testimony, books and records, papers and other data which Petitioner claims she does not otherwise have access, possession, or control. If this is a true statement, Petitioner Francesca Aguilera does not have "possession" of documentation to establish the present ongoing collection actions referred to in paragraphs 3 and 4 above ? This is another admission by Petitioner Fracesca Aguilera that she initiated illegal collection action for the years 1989, 1990 and 1991 without the required information to establish an alleged liability on the part of the Respondent.

Response to Petitioners Paragraph 9.

9. Respondent admits that Petitioner left a Summons at Respondent's address that was frivolous, unauthorized, failed to comply with numerous provisions of the IR Code as stated in the petition to quash, and not in compliance with Rule 4 of the Fed. Rul. of Civ. Proc. Petitioner Francesca Aguilera has failed to acknowledge or

reveal the Respondent replied to the Summons with a "Petition to Quash" (Exhibit 10) and cited various flaws to the Summons in question, as evidenced by this exhibit.

Furthermore the Certificate of Service of the Summons, states that it is "Pursuant to section 7603, Internal Revenue Code", which only applies to Title 27 CFR Part 70 of Alcohol, Tobacco, and Firearms, as shown in the Parallel Tables of Authorities for the implementing regulations, and not CFR 26 Internal Revenue.

Response to Petitioners Paragraph 10.

10. Same as Paragraph 9.

Response to Petitioners Paragraph 11.

Petitioner Francesca Aguilera states that she has no documents in her possession to establish any liability, yet she initiated collection action against Respondent in October of 1995, for years 1989, 1990, and 1991. She also claims the existence of a federal tax liability, but is now requesting information to establish that same liability. Petitioner Francesca Aguilera has shown no evidence of her authority, her jurisdiction over Respondent or any documentation to provide probable cause for her actions. Furthermore, Respondent replied to Internal Revenue Service Asst. District Counsel Neal 0. Abreu with a letter (Exhibit 11) questioning the validity of said Summons noting various violations of statutes; Mr. Abreu has yet to reply to this letter. The Summons that Petitioner Francesca Aguilera is attempting to misuse

relates only to Title 27 CFR Part 70 of Alcohol, Tobacco, and Firearms, as cited in the Parallel Tables of Authorities for the implementing regulations. Explanations in the table state that: "Entries in the table are taken directly from the rulemaking authority citations provided by federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate."

Respondent is a private citizen who has made no contract with the Secretary of the Treasury to manufacture, sell, or distribute alcohol, tobacco, or firearms, and is not employed by or have a contract with the United States government under any provision of the Uniform Commercial Code.

Response to Petitioners Paragraph 12.

12. The Petitioner again refers to Respondent's tax liability and again failed to establish how has she determined that Respondent has a tax liability. Petitioner Francesca Aguilera made conflicting statements that the Respondent has a tax liability and that she is not in possession of any information, records, or documentation to make such claim. Petitioner Francesca Aguilera attested to facts in her Verified Petition as being TRUE, but has made only contradictory statements in her attempt to establish a claim for liability. A liability must be based on assessments as detailed in IRR 301.6203-1, and notices of Deficiency (6212) must be served prior to any collection action.

A-10 cont.

An "assessment" is an administrative determination of tax liability and until the assessment has been made the tax has not been found to be owing. *In re We5tern Trading Co., D.C. Nev. 1972, 340 F.Supp. 1130.*

Response to Petitioners Paragraph 13.

13. The Petitioner, Francesca Aguilera, failed to establish any authority or jurisdiction over Respondent, and the Petitioner's Summons was not issued under Statutory requirements; the Respondent was not required to respond, for reasons stated in Paragraph 6.

Plaintiff incorporates herein by reference, paragraphs 1-13 above as if stated in full.

Wherefore, having stated in full its opposition to Petition to Enforce Internal Revenue Summons, Respondent prays for denial of said Petition and moves to dismiss this action with prejudice: A. Requests the Court to Order the removal of all liens and levies ab initio relating to these tax years 1989, 1990, and 1991.

B. The expungement of all lien and levy records ab initio relating to these tax years 1989, 1990 and 1991.

C. The return of all monies collected in this illegal action.

D. A sanction of $1,000.00 against Francesca Aguilera for this frivolous and meritless action that is procedurally insupportable. E. A sanction of $1,000.00 against Francesca Aguilera for each and every illegal lien and levy placed on Respondent's Wages, earnings and

accounts, including the Wage levy on Respondent's Wife's Wage at Montgomery Ward.

F. A sanction of $1,000.00 against David L. Denier for this frivolous and meritless action that is procedurally flawed.

G. Granting Respondent such other and further relief as the Court may deem just and proper.

JUDICIAL NOTICE

I respectfully request that the court take judicial notice of all cites and facts presented herein pursuant to:

Evidence Code 5451. Matters which must be judicially noticed

Judicial notice shall be taken of the following: (a) The decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter described in Section 3, 4, or 5 of Article XI of the California Constitution, and the abuse of process of the Federal Rules of Civil Procedure. Dated: 1 July 1996

signed Raymond B. Sherwood

EXHIBIT 1

PREFACE-1994 EDITION

This twelfth edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 4, 1995. By statutory authority, this edition may be cited "U.S.C. 1994 ed." Previous editions were published in 1926. 1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, 1982, and 1988.

Because many of the general and permanent laws that are required to be incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing, comprehensive project authorized by law to revise and codify, for enactment into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1, 3, 4, 5, 9, 10, 11. 13. 14, 17, I8, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46, and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein contained.

The matter contained in the other titles of the Code is prima facie evidence of the laws.

EXHIBIT 1 cont.

The title and chapter structure of the 1988 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1988.

This edition was prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company. and the Government Printing Office for their untiring efforts and cooperation.

signed Newt Gingrich,

Speaker of the House of Representatives;

Washington, D.C., January 4, 1995.

EXHIBIT 1 cont.

TITLES OF UNITED STATES CODE

*1. General Provisions.

2. The Congress

*3. The President.

*4. Flag and Seal, Seat of Government and the States.

*5. Government Organization and Employees; and Appendix.

+6. (Surety Bonds).

7. Agriculture.

8. Aliens and Nationality.

*9. Arbitration.

*10. Armed Forces; and Appendix.

*11. Bankruptcy; and Appendix.

12. Banks and Banking.

*13. Census.

*14. Coast Guard.

15. Commerce and Trade.

16. Conservation.

*17. Copyrights.

*18. Crimes and Criminal Procedure; and Appendix.

19. Customs Duties.

20.Education.

21. Food and Drugs.

22. Foreign Relations and Intercourse.

EXHIBIT 1 cont.

*23. Highways.

24. Hospitals and Asylums.

25. Indians.

26. Internal Revenue Code; and Appendix.

27. Intoxicating Liquors.

*28. Judiciary and Judicial Procedure; and Appendix.

29. Labor.

30. Mineral Lands and Mining.

*31. Money and Finance.

*32. National Guard.

33. Navigation and Navigable Waters.

|34. (Navy).

*35. Patents.

36. Patriotic Societies and Observances.

*37. Pay and Allowances of the Uniformed Services.

*38. Veterans' Benefits; and Appendix.

*39. Postal; Service.

40. Public Buildings, Property, and Works; and Appendix.

41. Public Contracts.

42. The Public Health and Welfare.

43. Public Lands.

*44. Public Printing and Documents.

45. Railroads.

EXHIBIT 1 cont.

*46. Shipping: and Appendix.

47. Telegraphs, Telephones, and Radiotelegraphs.

48. Territories and Insular Possessions.

*49. Transportation.

50. War and National Defense; and Appendix.

---

*This title has been enacted as law. However, any appendix to this title has not been enacted as law.

+This title was enacted as law and has been repealed by the enactment of Title 31.

|This title has been eliminated by the enactment of Title 10.

Note: The lack of an astrick (*) indicates title 26 has not been enacted into positive law.

(See Page III)

EXHIBIT 2

PARALLEL TABLE OF AUTHORITIES AND RULES

The following table lists rulemaking authority (except 5 U.S.C. 301) for regulations codified in the *Code of federal Regulations.* Also included are statutory citations which are noted as being interpreted or applied by those regulations.

The table is divided into four segments: United States Code citations, United States Statutes at Large citations, public law citations, and Presidential document citations. Within each segment the citations are arranged in numerical order:

For the United States Code, by title and section;

For the United States Statutes at Large, by volume and page number.

For public laws, by number; and

For Presidential documents (Proclamations, Executive orders, and Reorganization plans) by document number.

Entries in the table are taken directly from the rulemaking authority citation provided by Federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate. Because Federal agencies sometimes present these citations in an inconsistent manner, the table cannot be considered all-inclusive.

The portion of the table listing the United States Code citations is the most comprehensive, as these citations are entered into the table whenever they are given in the authority citations provided by the agencies. United States Statutes at Large and public law citations are carried in the table only when there are no corresponding United States Code citations given.

For a list of current public laws cited as rulemaking authority, see the Parallel Table of Authorities and Rules in the monthly "List of CFR Sections Affected" (LSA).

This table is revised as of January 1, 1995. Additions and removals to the table resulting from regulations published in the *Federal Register* since January 1, 1995, are found in the current month's edition of the LSA.

Authorities

26 U.S.C. (1986 I.R.C.) Continued	CFR
6001	26 Parts 1, 31, 55, 156 27 Parts 19, 53, 194, 250, 296
6011 – 6012	26 Part 1

EXHIBIT 2 cont.

6011.....26 Parts 31, 40, 55, 156, 301
.... 27 Parts 25, 53, 194

6015.....26 Part 1

6020 .....27 Parts 53, 70

6021.....27 Parts 53, 70

6031.....26 Part 1

6033.....26 Part 301

6036.....26 Part 301

6038 – 6038B.....26 Part 1

6038A.....26 Part 1

6039A.....26 Part 7

6041.....26 Part 1

6043.....26 Part 1

6045.....26 Parts 1, 5f

6047.....26 Part 35

6048.....26 Part 404

6049.....26 Part 1

6050D.....26 Parts 1, 602

6050H – 6050I-1.....26 Part 1

6050K – 6050L.....26 Part 1

6050M.....26 Parts 1, 301

6050P.....26 Part 1

6051 ....26 Part 31

6053.....26 Part 31

EXHIBIT 2 cont.

6056.....27 Part 22

6059.....26 Part 301

6060.....26 Part 1

6061.....26 Part 156
27 Parts 22, 25, 53, 194, 270, 285, 290

6064.....27 Part 70

6065.....26 Part 1
27 Parts 18, 20, 22, 24, 25,
194, 197, 252, 270, 285,290

6071..... 26 Parts 1, 31, 40, 55, 154, 156
..... 27 Parts 53, 194

6081.....27 Part 53

6090.....26 Part 43

6091.....26 Parts 1, 40, 44, 46, 55, 156,
... 27 Parts 24, 25, 53, 194, 197,

6101 – 6104.....27 Part 53

6101.....26 Part 40

6102.....27 Part 70

6103 – 6104..... 26 Part 301

6103.....20 Parts 401, 422
42 Parts 401

6109.....26 Parts 35a, 40, 150
27 Parts 19, 22, 24, 53, 194, 197, 270, 285

6111 –6112.....26 Part 301

6151.....27 Parts 22, 25, 53, 194, 270, 290

6154.....26 Part 1

6155.....27 Parts 53, 70

EXHIBIT 2 cont.

6157..... 26 Part 31

6158.....26 Part 301

6159.....27 Part 70

6161.....26 Part 158.
.27 Part 53

6201.....27 Part 70

6203 – 6204.....27 Part 70

6205.....26 Part 31

6223..... .....26 Part 301

6227.....26 Part 301

6230 – 6231..... ... 26 Parts 1, 301

6232.....26 Parts 41, 150

6233.....26 Part 301

6241.....26 Part 301

6245.....26 Part 301

6301 – 6303.....27 Part 53

6301-6302.....27 Part 24

6301 – 6302.....27 Parts 24.
25, 250, 270, 275.

6301.....27 Part 70

6302..... ....26 Parts 1, 31, 40,
27 Parts 19, 251, 285
31 Parts 203, 214

6303.....27 Part 70

6311.....27 Parts 19, 24, 25, 53, 70, 194, 270

EXHIBIT 2 cont.

6313 - 6314.....27 Part 70

6313.....27 Parts 25, 270, 275, 295.

6314.....27 Part 194

6321..... .27 Part 70

6323.....26 Part 1
27 Part 70

6324A – 6324B..... .26 Part 301

6325.....26 Part 401
.....27 Part 70

6326.....26 Part 301
27 Part 70

6331 – 6343.....27 Part 70

6334..... 26 Part 404

6364.....26 Part 31

6401.....27 Part 70

6402.....27 Parts 25, 53, 194, 197, 270, 285, 290.

6404..... ...26 Part 301
27 Parts 53, 70, 270, 275, 285, 290

6407.....27 Part 70

6416.....27 Parts 53, 70.

6423.....27 Parts 70, 270

6426.....26 Part 154

6501.....27 Part 70

6503.....27 Part 70

6511.....27 Parts 70, 194, 197

EXHIBIT 2 cont.

6513 – 6514.....27 Part 70

6532.....27 Part 70

6601 – 6602.....27 Part 70

6601.....27 Parts170, 194, 296

6611.....27 Part 70

6621 – 6622..... 27 Parts 70, 170, 206, 24, 25, 197, 270, 285

6689.....26 Part 301

6701.....27 Part 70

6721.....26 Part 35a

6723.....27 Part 70

6801.....27 Part 70

6804.....27 Part 250

6806.....27 Parts 19, 22, 25, 270, 285, 290

6851.....26 Part 1

6862 – 6863.....27 Part 70

6867.....26 Parts 1, 301

6901.....27 Part 70

7011.....27 Parts 19, 22, 24, 25, 70, 194, 270, 285, 290

7025.....27 Part 197

7101 - 7102.....27 Part 250

7101..... 26 Part 403
27 Parts 72, 275

7102.....27 Parts 70, 250

EXHIBIT 2 cont.

7121 - 7122.....27 Part 70

7207.....27 Part 70

7209.....27 Part 70

7212.....27 Parts 170, 270, 275, 285, 290, 295, 296

7213..... 27 Part 197

7214.....27 Part 70

7216.....26 Parts 1, 301

7302.....27 Parts 24, 252

7304.....27 Part 70

7322 – 7327.....26 Part 403

7322 – 7326.....27 Part 72

7325.....27 Parts 270, 285

7326.....27 Part 72

7327.....27 Part 72

7342.....27 Parts 24, 25, 170. 270, 275, 285, 290, 295, 296

7401.....27 Part 70

7403.....27 Part 70

7406.....27 Part 70

7423 – 7426.....27 Part 70

7429 – 7430.....27 Part 70

7432.....27 Part 70

7502 – 7503.....27 Parts 24, 70, 270

7505 – 7506.....27 Part 70

EXHIBIT 2 cont.

7510.....27 Part 19

7513.....27 Part 70

7519.....26 Part 1

7520.....26 Parts 1, 20, 25, 301

7601 – 7606..... ...27 Part 70

7602.....27 Parts 170, 296

7606.....27 Parts 24, 25, 170, 270, 285, 290, 285, 296

7608.....27 Parts 70, 170, 296

7610.....27 Part 70

7622 – 7623.....27 Part 70

7624.....26 Part 301

7651 et seq.....40 Part 76

7651 – 7652.....27 Part 250

7652.....27 Part 275

7653.....27 Part 70

7654.....26 Part 1

7701.....26 Parts 1, 31, 301

....7804.....26 Part 1

7805.....20 Part 615
26 Parts 1, 3

Exhibit 10

PETITION TO QUASH

This is a petition to quash the illegal summons, Form 6637 and 6638's that is dated the 7th day of February 1996.

The reasons to quash this alleged summons are:

1. There is no basis for jurisdiction as the summons fails to provide a signature of a duly elected or appointed judge or seal of clerk of a 9th District Court to comply with appropriate process to compel any production of records pursuant to IRC 7402(b).

a. The court holds that: If the Secretary or his delegate wishes to enforce the summons, he must proceed under 5 7402(b), which grants the District Courts of the United States jurisdiction "by appropriate process to compel such attendance, testimony, or production of books, papers, or other data. Reisman v. Caplin, 375 US 440, 445, 446, 84 S.Ct. 508, 11 L.Ed.2d 459 (1964).

b. The court also holds that: An application for an ex parte order directing respondent to obey an internal revenue service summons with respect to income tax records is treated as a complaint and under Rule 8 it is necessary for the complaint to contain a short and plain statement of the claim showing that the pleader is entitled to relief. Matter of Carroll, D.C.N.Y. 1957, 246 F.2d 762, certiorari denied 78 S.Ct. 85, 355-U.S. 857, 2 L.Ed.2d 64.

EXHIBIT 10 cont.

2. In the matter of Beverly J. Sherwood and Raymond B. Sherwood there has been NO audit, hearing, assessment, deficiency, or judicial action in any administrative court or civil court to allow jurisdiction for any matter relating to this fraudulent summons notice!

3. There is no liability at law or in equity, nor is there any official documented liability for any income tax, which may be relevant or material to this inquiry pursuant to IRC 7602(a), (1).

4. The unspecified demand for records in general is a general search prohibited by the Fourth Amendment requirement of "particularly describing" the place and things to be searched.

5. Summons is a fraudulent document that is unsupported by facts shown on the system of records known as Individual Master File (IMF); Data Services — Treasury/ IRS 24.030; and therefore is unsupported by probable cause based on oath or affirmation for a cause of action in due process of law.

6. There was no service of process or Proof of service in compliance with Rule 4 of the Federal Rules of Civil Procedure. Practice Commentaries state that if the defendant has never been served, not only will the default be vacated; the action will be dismissed as well.

7. The summons is flawed by the failure to provide the correct time from service to appearance pursuant to IRC 5 7609. No notice was given

EXHIBIT 10 cont.

to the person identified in the matter of the summons pursuant to IRC 57609(a)(2) and 26 CFR 301.7609-3(a) Notified person.

The Ninth Circuit in Worrel v. B.F. Goodrich Co., 845 F.2d 840 (1988) held that as long as the acknowledgement is duly returned, the date of its signing by the defendant starts the running of the answering time as supplied by Rule 12(a). Therefore;

8. The summons is flawed by the failure to allow the correct time for petition to quash, which prejudices Petitioners, by allowing a mere 13 day period in violation of the procedures of IRC Sec. 7609(a) requiring a notice be given within 3 days of the date of "service" to any person identified in the summons, but no later than the 23rd day fixed for examination,

9. Summons violates the provisions of IRC 57609(d), (1) in that: No examination of any records under a summons may be made before the close of the 23rd day after the day notice of the summons is provided pursuant to IRC 7609(a)(2), as noted above.

10. The lack of evidence or identity by the Internal Revenue Service of the court of jurisdiction pursuant to IRC _ 7402, 7609(h), 7602 denies the identity of a court to which a petition to quash may be sent by the notified person or any person identified in the records contained in the summons, to comply with 26 CFR 301.7609-3(b)(2)(i) and IRC 7609(b)(2). "It is a universal rule that a party who invokes the jurisdiction of the federal court

EXHIBIT 10 cont.

must allege all facts necessary to give the court jurisdiction of the subject matter." Stewart v. U.S., C.A.7th, 199 F.2d 517, 520 (Major, C.J).

11. Since there is no court of jurisdiction this original is sent only to Mrs. F. Aguilera at 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598.

12. Most importantly! There is no *LEGISLATIVE* JURISDICTION for Title 26 USC Internal Revenue Code as legal evidence of law, because Title 26 USC has never been enacted into positive law as confirmed in Title 1 USC 9204(a) et sea.

Inclusion of statute in United States Code.

The United States Code is only a prima facie statement of the statute law, and statutes collected in it do not change their meaning nor acquire any new force by their inclusion and if construction is necessary, recourse must be had to the original statutes themselves. Murrel v. W. U. Tel. Co., C.C.A. Fla. 1947, 160 F.2d 787.

Based upon the above information we pray that this summons be quashed to prevent an unauthorized invasion of our personal records, papers and effects thus violating our constitutional rights and privileges under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

EXHIBIT 10 CONT.

VERIFICATION

I, Raymond B. Sherwood, declare as follows: That I am the subject of the above-entitled action; I have prepared and read the foregoing PETITION TO QUASH and know the contents thereof; that the same is true of my knowledge, except as to the matters which are therein stated on my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 13th day of February 1996 at Pleasant Hill, California.

signed

_____

Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Enclosed is a true copy of my notarized signature.

Certified Mail No. Z 419 881 722

EXHIBIT 11

RAYMOND B. SHERWOOD

1612 MERIAN DR.

PLEASANT HILL, CALIF 94523

(510) 827-2604

Mr. Neal O. Abreu, Assistant District Director

Internal Revenue Service

4771 Watt Ave. Suite 474

Sacramento, Calif. 95813-2900

Dear Mr. Abreu:

I have received your letter dated March 7, 1996, and please be aware I do not plan to attend your proposed appointment because you and/or other Internal Revenue Officers have failed to reply to my other inquires regarding some of my questions.

In regard to your letter mentioned above, are you suggesting that YOU or the Internal Revenue Service has some authority over me?

If the answer to this question is yes, will you kindly inform me just what this authority is and how it related to me?

In regard to your letter mentioned above, would you please be so kind as to inform me just what is your jurisdiction over me?

I have spent considerable time in researching the Internal Revenue Code and I can not find answers to those questions.

EXHIBIT 11 cont.

I have found that Title 26 of the Code has never been enacted into positive law and as such is only prima facie evidence.

I also would appreciate knowing the Delegated Authority of one named Dorothy May to serve your administrative summons.

Which is further flawed by:

1. The failure to allow the correct time for petition to quash, which prejudices Beverly J. Sherwood and Raymond B. Sherwood, the subjects to this action, by allowing a mere 14 day period in violation of the procedures od IRC Sec. 7609(a) requiring a notice be given within 3 days of the date of "service" to any person identified in the summons, but no later than the 23rd day filed for examination.
2. The summons violates the provisions of IRC Sec 7609(d), (1) in that: No examination of any records under a summons may be made before the close of the 23rd day after the day notice of the summons is provided pursuant to IRC Sec. 7609(a)(2).
3. The lack of evidence or identity of a court of jurisdiction by the Internal Revenue Service pursuant to IRC Sec. 7402, 7609(h), 7602 denies the identity of a court to which a petition to quash may be sent by the notified person or any person identified in the records contained in the summons, to comply with 26 CFR 301.7609-3(b), (2), (I), and IRC Sec. 7609(b), (2), even if Title 26 had been enacted into Positive law.

EXHIBIT 11 cont.

4. There is no basis for jurisdiction as the summons fails to provide a signature of a duly elected or appointed judge or seal of clerk of a 9th District Court of the United States to comply with appropriate process to compel production of records pursuant to IRC 7402(b).

The court holds that: If the Secretary or his delegate wishes to enforce the summons, he must proceed under Sec. 7402(b), which grants the District Courts of the United States jurisdiction "by appropriate process" to compel such attendance, testimony, or production of books, papers, or other data." Reisman v. Caplin, 375 440, 445, 84 S. Ct. 508, 11 L. Ed. 2nd 459 (1964).

The court also holds that: An application for an ex parte order directing respondent to obey an Internal Revenue Service Summons with respect to income tax records is treated as a complaint to contain a short and plain statement of the claim showing that the pleader is entitled to relief. Matter of Carrol, D.C. N.Y 1957, 246 F. 2d 762, cert. Denied 78 S. Ct. 85, 355 U.S. 857, 2 L.Ed. 2d 64.

Please respond within 20 days.

Sincerely

signed Rraymond B. Sherwood Dated March 10, 1996

Cert. # Z 005 648 845

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service, Petitioners,	NO. C-96-1828-MEP
v.	ORDER ENFORCING SUMONSES
RAYMOND B. SHERWOOD, Respondent.	

This case having come on for hearing on July 26, 1996, at 10:30 a.m., upon the return of an Order to Show Cause heretofore issued by this Court, and the Court having considered the record herein, including the Verified Petition To Enforce Internal Revenue Summonses, it is hereby

ORDERED that respondent **RAYMOND B. SHERWOOD** appear before petitioner **FRANCESCA AGUILERA** or any other designated agent, on or before September 9, 1996, at a time, place or places to be designated by said petitioner to said respondent, and then and there give such testimony and produce such items described in the subject internal

revenue summonses, true copies of which are attached hereto as Exhibit A and B it is further

ORDERED, pending compliance with the subject internal revenue summonses, that respondent Raymond B. Sherwood maintain and preserve all documents and records described in the subject internal revenue summonses which are in his possession or control and that respondent Raymond B. Sherwood refrain from destroying said documents and records, and from taking any other action which would remove said documents from his possession or control, or would in any other way prevent production of said documents and records pursuant to the summonses.

ORDERED that the Case Management/Status Conference set for August 16, 1996, at 9:30 a.m. be vacated to be reset, if necessary, at a later date.

ORDERED this *29th* day of *July*, 1996, at San Francisco, California.

signed Marilyn Hall Patel

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service,

Petitioners,

v.

RAYMOND B. SHERWOOD,

_____/

Respondent.

No. C-96-1828 MHP

SUPPLEMENTAL ORDER

Respondent Raymond Sherwood has been the subject of investigation by the Internal Revenue Service ("IRS") for potential tax liabilities for the years 1989-1991 and 1994. In connection with that investigation, Revenue Officer Francesca Aguilera issued a summons to Sherwood directing him to appear and produce documents and records relating to his assets and liabilities for those years. After Sherwood failed to appear, the United States and Aguilera petitioned this court to enforce the summons under 26 U.S.C. §§ 7402(b) & 7604(a). The court issued an order to show cause why respondent should not be compelled to appear and produce documents on May 23, 1996. The May 16 order allowed for the respondent to file a written response to the petition and for the government to reply. Sherwood

moved to dismiss the order to show cause and the United States opposed the motion. The court now considers those submissions.

Sherwood argues that the order to show cause was not authorized by the Federal Rules of Civil Procedure and that the court is without subject matter jurisdiction, personal jurisdiction, legislative jurisdiction, and Constitutional jurisdiction. Sherwood also responds to the petition on which the order to show cause was based.

Sherwood's arguments are patently absurd. For as long as citizens have been advancing inventive arguments for why the federal tax laws were never properly enacted or are not applicable to them, the federal courts have been defeating those claims. "For over 75 years, the Supreme Court and the lower federal courts have both implicitly and explicitly recognized the Sixteenth Amendment's authorization of a nonapportioned direct income tax on United States citizens residing in the United States and thus the validity of the federal income tax laws as applied to such citizens.,, In re Becraft, 885 F.2d 547, 548 (9th Cir. 1989) (citations omitted).

Despite respondent's fanciful contentions to the contrary, Title 26 of the United States Code was indeed enacted into law and provides this court with subject matter jurisdiction over enforcement of a summons

under internal revenue laws. 26 U.S.C. §§ 7402(b) &: 7604(a). Moreover/ this court has personal jurisdiction over respondent by virtue of his residence in this district. Fed. R. Civ. P. 4(k)(1)(A); Omni Capital Int'l, Ltd. v. Rudolph Wolff & Co., Ltd., 484 U.S. 97 (1987).- Accordingly, all of respondent's jurisdictional arguments fail.

Finally, Sherwood argues that the court's order to show cause was not authorized by the Federal Rules of Civil Procedure. The order was authorized by Title 26 which gives a district court power to enforce a summons issued by the IRS upon a proper showing. The showing the government must make is slight. United States v. Powell, 379 U.S. 48, 58 (1994); United States v. Abrahams, 905 F.2d 1276, 1280 (9th Cir. 1990). Respondent then has a burden to show that the government is acting in bad faith or that enforcement would be improper. United States v. Dynavac, Inc., 6 F.3d **1407t** 1414 (9th Cir. 1993). While the government met its burden, Sherwood cannot meet his. His responses to the petition are almost entirely premised on the lack of jurisdiction reject above. To the extent that they merely protest the procedural propriety of the investigation and the summons, they are equally unpersuasive.

Accordingly, Sherwood.is HEREBY ORDERED to comply with the order to enforce summons filed by this court on July 30, 1996.

IT IS SO ORDERED.

Dated: July 31, 1996 signed Marilyn Hall Patel

United States District Judge

MICHAEL J. YAMAGUCHI (California State Bar No. 84984)

United States Attorney

JAY R. WEILL (California State Bar No. 75434)

Assistant United States Attorney, Chief, Tax Division

DAVID L. DENIER (California State Bar No. 95024)

Assistant United States Attorney ,10th Floor Federal Building

450 Golden Gate Avenue, Box 36055

San Francisco, California 94102, Telephone: (415) 436-6888

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service, Petitioners,	No. C-96-1828 MHP
RAYMOND B. SHERWOOD, Respondent.	APPLICATION AND ORDER OF DISMISSAL

Petitioners United States of America and Francesca Aguilera hereby advise the Court that respondent Raymond B. Sherwood appeared before petitioner Aguilera pursuant to the Court's Order Enforcing

Summonses and request that this action be dismissed pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

MICHAEL J. YAMAGUCHI
United States Attorney

signed David L. Denier
DAVID L. DENIER

Assistant United States Attorney
Tax Division

ORDER

Upon the request of the petitioners and pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, this action is hereby dismissed.

ORDERED this _____day of SEP 20 1996, at San Francisco, California.

signed MARILYN HALL PATEL

UNITED STATES DISTRICT JUDGE

A-13 cont.

Supreme Court, U.S.
FILED

99 2 46 MAR 1 - 1999

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October 1998 Term

Raymond B. Sherwood

Petitioner,

v.

Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDEX II

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

No.

==========

IN THE

SUPREME COURT OF THE UNITED STATES

October 1998 Term

Raymond B. Sherwood

Petitioner,

v.

Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDEX II

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

Raymond Bailey, Sherwood, SUI JURIS
1612 MERIAN DR.
Pleasant Hill, Calif. 94523
(510) 827-2604 IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood
a proper and necessary
Party
Plaintiff,

Marilyn Hall Patel in
her private person
Defendant.
_____/

File Number: C-97-2796 CW

COMPLAINT AGAINST
MARILYN HALL PATEL FOR
ABUSE OF LEGAL PROCESS,
RULING WITH WANT OF
JURISDICTION, FOR
VIOLATION OF
CONSTITUTIONAL DUE PROCESS
OF LAW.

DEMAND FOR JURY TRIAL
(Federal R. Civ. P, Rule 38)
(L.R. 3-6)
Demand for Article III court and Article III Judge

NOTICE

PLEASE BE AWARE that Plaintiff is not an attorney and is appearing propria persona (without counsel) as the court knows, and the court may not hold Plaintiff to the same standards as it-. would an attorney.

The Supreme Court in Jenkins v. McKeithen, 395 USC 411, that pro se pleadings are not to be held to the same high standards of perfection as lawyers. U.S. Court of Appeals 6th Circuit in Pickett v. Cox-456 F. 2d; P.2d 240: and Third Circuit ruled in Picking V. Penna Railroad, 151 F 2d 240 PRO SE

PLEADINGS ARE TO BE CONSIDERED WITHOUT REGARD TO TECHNICALITY.

DISREGARD OF ERROR or defect not affecting substantial right. The Court shall, in every stage of an action, disregard any error or defect in the pleading proceedings which does not affect the substantial rights of the adverse party. *(1972) 404 U.S. 519. 92 S. Ct. 594. 20 L. Ed 2d 652.*

PRELIMINARY STATEMENT

1. This action is against Marilyn Hall Patel, as an individual, for improper action outside the scope of her authority as a Federal Judge in violating Plaintiff's rights by malicious abuse of legal process in ordering an appearance for an unlawful administrative summons without personal or subject matter jurisdiction. Such action taken under color of official title violates the constitutional rights guaranteed to plaintiff under Article III, Section 2, and the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States of America.

II
JURISDICTION

2. Original jurisdiction of all civil actions with a federal question or arising under the Constitution or laws of the United States is conferred on this court by 28 USC Sec. 1331 and\cr 1343(a)(3) and (4).

3. Original jurisdiction of a civil action under any act of Congress

providing for internal revenue is conferred on this Court by 28 USC Sec. 1340.

4.. Jurisdiction over the civil action for deprivation of rights is conferred on this court by 28 USC Sec. 1343 (a)(1).

5. Should any particular constitutional provision, law or statute not apply, Plaintiffs still sues the Defendant under the remaining applicable provisions and laws.

III
VENUE

6. The acts described herein transpired within the State of California, and this judicial district of California and involve federal law questions. Plaintiff is a citizen and resident of Contra Costa County in the State of California. Defendant is a citizen, resident or entity of the state in this judicial district of California, and therefore, pursuant to 28 USC Sec.1391(b) (e) (2), venue is properly set herein.

IV
PARTIES

7. Plaintiff Raymond Bailey, Sherwood is now, and at all times mentioned herein, a Citizen of the united States of America residing at 1612 Meriaa Dr., Pleasant Hill, California

8. Defendant Marilyn Hall Patel is an acting Federal Judge of the Ninth District court of the United States of America in San Francisco, California.

During all relevant times, Marilyn Hall Patel did not believe or could not have believed that her conduct was lawful, in light of clearly established law and the information she possessed.

STATEMENT OF FACTS

9. On July 31, 1996 Defendant Marilyn Hall Patel, acting in the capacity of a Federal Judge, issued a Supplemental Order supporting an Order to Show Cause, Re Enforcement of Internal Revenue Service Summonses, dated 23 May 1996 (Exhibit A); and Order Enforcing Summonses, dated 29 July 1996 (Exhibit B). All the above were issued in want of personal and subject matter jurisdiction to force Raymond Sherwood properly known as Raymond Bailey, Sherwood, co appear before Revenue Officer Francesca Aguilera and disclose privileged personal information against his will and against his stated written objection to the court.

The transcript (Exhibit C) shows that during the hearing on July 26, 1996 defendant acted with bias and prejudice against plaintiff, by acting as an attorney from the bench in not allowing opposing Counsel Denier to proceed; and made light of the Newt Gingrich, Tom Foley and Tip O'Neil declarations on the Title Pages of the Codes that affirm the "prima facie" status of the United States Codes. (Page 6 lines 2-20 of the tran5cript).. Plaintiff challenged the jurisdiction of the court for the subject matter and asked defendant Marilyn Hall

Patel: "Is there a complaint that has been filed in this matter", and defendant replied: "there is no complaint and there need not be in this kind of a - proceeding.11 (Page 3 line 14-15 Transcript) Plaintiff alleges that no subject matter jurisdiction exists against private Citizens without a complaint.

VI

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of The Constitution under Color of Office against the Defendant)

11. Defendant Marilyn Hall Patel, acted in an individual capacity under color of office, outside the scope of her employment and authority as a Federal Judge, issued a Supplemental Order (Exhibit A) requiring an appearance for an administrative summons in want of personal and subject matter jurisdiction.

> Disclosures to Internal Revenue Service agent, revenue cc special, must be entirely voluntary and must not be induced by coercion, fraud or misrepresentation. *Cohen v. U.S., C.A.Mo. 1968, 405 F.2d 34, certiorari denied 89 S.Cc. 1274, 294 U.S. 943, .'L'2 L.Ed.2d 479.*

12. The allegations set forth in paragraphs 1 through 11 above are hereby incorporated by reference as if fully re-alleged herein.

13. The wrongful actions of defendant, as an individual, were arbitrary, capricious, in bad faith, not appropriately related to legitimate governmental ends, beyond the authority of defendant and were so unfounded and outrageous

as to shock the conscience or otherwise violate the norms explicit in the concepts of ordered liberty. These wrongful acts are egregious and were, taken with intentional or reckless disregard for the facts and circumstances that were known, or should have been well known, to defendant. Article VI, Section 3 mandates that all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support the Constitution. The defendant is thus individually liable for her violations of plaintiff's constitutional rights.

14. The deprivation of plaintiffs' constitutional rights by the individual defendant sued herein violated the rights guaranteed to the plaintiff under the First, Fourth, and Fifth Amendments to the United States Constitution. Specifically, defendant denied the plaintiff his right to equal protection under the law; denied the plaintiff his right to substantive and procedural due process; denied the plaintiff his right to be free from unlawful searches and seizures and the right to be secure in his business and home; denied plaintiff his right to confront his accuser; denied plaintiff his right to petition the government for redress of grievances; and deprived plaintiff his right of privacy and to be free from government interference; and deprive plaintiff of his civil rights.

15. As a direct and proximate result of defendant's unconstitutional actions, plaintiff has suffered severe emotional distress and has been injured in

his business, personally and has lost good will and his good reputation and standing in the community, lost profits and business opportunities, incurred extensive unnecessary legal search and costs and has otherwise suffered at the hands of defendant.

16. Accordingly, judgment should be rendered against the defendant for the violations of plaintiff'5 constitutional rights in an amount of $1 million.

17. The defendant committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring plaintiff by the misuse of her vast power of office as a federal district court judge. Plaintiff is thus entitled to recover punitive damages from the defendant.

SECOND CLAIM FOR RELIEF
(Lack of subject matter and personal jurisdiction against defendant)

18. The allegations set forth in paragraphs 1 through 18 above are hereby incorporated by reference as if fully re-alleged herein.

19. Defendant relied upon the information in the Verified Petition (Exhibit D) to presume jurisdiction over plaintiff and force plaintiff, Raymond Bailey, Sherwood, to appear before Revenue Officer Francesca Aguilera and disclose privileged personal information against his will, and was pursued to deprive plaintiff of his constitutional rights. These intentional, unconstitutional actions of the defendant have deprived the plaintiff of the civil

rights and equal protection and privileges and immunities under due process of law and are depriving plaintiff of other rights generated by the Constitution and available to any citizen of the United States.

20. As a direct and proximate result of defendant's unconstitutional actions, plaintiff has suffered severe emotional distress and has been injured in his business, personally and has lost good will and his good reputation and standing in the community, lost profits and business opportunities, incurred extensive unnecessary legal search and costs and has otherwise suffered at the hands of defendant.

21. Accordingly, judgment should be rendered against the defendant for the violations of plaintiff's constitutional rights in an amount of $1 million.

22. The defendant committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring plaintiff by the misuse of her vast power of office as a federal district court judge. Plaintiff is thus entitled to recover punitive damages from the defendant.

23. The VERIFIED PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONSES (Exhibit D) stated at paragraph 1 (line 19-22 page 1) that: This proceeding is brought and this court has jurisdiction hereof under Sections 7402(b) and 7604(a) of the Internal Revenue Code (26 U.S.C. §§ 7402 and 7604).

A-14 cont.

NO "APPROPRIATE PROCESS" OR "INSTANCE"

FROM THE UNITED STATES

24. Defendant claimed jurisdiction under S 7402(b), but failed to acknowledge the appropriate process" requirement, which is specified in Sec. 7402(a) as being "at the instance of the United States"; and defendant claimed jurisdiction without authorization from the Secretary of the Treasury, as specified in Sec. 7401, for authority to commence "civil action., Jurisdiction over the subject matter means the court has been given only certain types of cases which it may hear, and compliance with Sec. 7401 is the "INSTANCE" required prior to implementing Sec. 7402(a) .

25. There is no tangible evidence of an 'INSTANCE" from the United States for jurisdiction under 7402(a) by a complaint or written record of request pursuant to 7401 and the supporting reference of 26 CFR S 301-7401-1: U.S. Attorneys' Manual Title 6 Tax Division 6-3-111 Origin and Authorization: and Legal Reference Guide for Revenue Officers at 422, Authorization.

26. UNITED STATES ATTORNEYS' MANUAL TITLE 6 - TAX DIVISION, 6-3.111 Origin and Authorization states: Actions to collect taxes on behalf of the government originate by a request and authorization from a delegate of the Secretary of the Treasury, and are brought at the direction of the Attorney General, pursuant to Section 7401. The authority of the Secretary of the

Treasury to authorize and request such suits has been delegated to the Chief Counsel of the Internal Revenue Service. The Chief Counsel requests the commencement of a collection action, whether it be to reduce the assessment to Judgment or to foreclose the tax lien cn specific property, by a letter addressed to the Assistant Attorney General in charge of the Tax Division. These requests are routed to the chief of the appropriate Civil Trial Section who assigns them to individual attorneys for handling. An attorney in the appropriate Civil Trial Section drafts the compliant and then forwards the pleading, with a detailed letter setting out a statement of the facts and citing the pertinent authorities, to the U.S. Attorney. The U.S. Attorney should promptly forward advice as to the date the compliant was filed. (The record and the transcript [Exhibit C] will show that no complaint was filed)

27. "It is a universal rule * * * that a party who invokes the jurisdiction of the federal court must allege all facts necessary to give the court jurisdiction of the subject matter." *Stewart v. U.S., C.A. 7th, 199 F.2d 517, 520 (Major, C.J*

28. Jurisdiction involves two simple concepts, neither of which may be violated. Before the court can stand in judgment of a person, it must first prove it has jurisdiction over the person and the subject matter. Jurisdiction over the person means the person is included within the geographic boundaries of the court and that a charge (complaint) was properly served against said

defendant. The record shows that no complaint was filed. When there is no complaint there is no subject matter or personal jurisdiction over the private person and affairs of the plaintiff.

29. Defendant's statement claiming jurisdiction under "administrative process" was misleading and erroneous. It takes an Act of Congress (a statute) to actually confer the jurisdiction on a district court, and the presence of subject matter jurisdiction, usually with a citation of the jurisdiction conferring statute, must be demonstrated in every case.

> "Where jurisdiction is challenged it must be proven;" *Ha*gans v. *Lavine 415 U.S. 533.*

30. Plaintiff challenged the court's jurisdiction, by stating that if there was a jurisdiction in this action there has to be a complaint. (Page 4 line 13 through 20 of the transcript [Exhibit C] The defendant erred by disregarding the necessity for "civil action" and dismissed this requirement by stating there were other types of actions as there are with these types of proceedings. *Black's Law Dictionary* defines Civil action as: action brought to enforce, redress, or protect private rights. Defendant erred in failing to recognize that plaintiff is a private Citizen with private rights who is guaranteed civil action by due process.

> There is but one form of action, which has no name, so that action cannot be defeated here as it could at common law because not properly named. *Benzler v. Van Fleet (1915) 28 CA 389, 152 P 736.*

> "Jurisdiction is essential to give validity to the determination of

> administrative agencies and where jurisdictional requirements are not satisfied, the action of the agency is a nullity... *11 City Street Improv. Co. v. Pearson, 181 C 640, 185 P. 962; O'Neill* v. *Dept. of Professional & Vocational Standards 7 CA 2d 393, 46 P2d -734.*
>
> "The law requires PROOF OF JURISDICTION to appear an the Record of the administrative agency and all administrative proceedings." *Hagans v. Lavine, 415 U.S. 533.* (Emphasis added)

31. Jurisdiction over the subject matter means the court has been given only certain types of cases which it may hear, and compliance with Sec. 7401 is the "INSTANCE" required prior to implementing Sec. 7402(a).

32. Since there is no complaint there is no subject matter . or personal jurisdiction over the private person and affairs of the plaintiff, therefore, the defendant ruled and ordered in want of jurisdiction.

A COMPLAINT IS REQUIRED FOR CIVIL ACTION

33. Rule 3 Fed. Rules of Civil Procedure Commencement of Action.- A civil action is commenced by filing a complaint with the court.

> "Internal Revenue Code provision that civil action may not be commenced unless Secretary of Treasury or his delegate authorizes or sanctions it and the Attorney General or his delegate directs that it be commenced, is jurisdiccional." "This Court holds that26 U.S.C. S 7401 requirements constitute facts essential to jurisdiction. The failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action. This Court erred in hearing the case on the merits and now determines such hearing was a nullity and not amenable to effective order or judgment, except the order now made that this Court does not have jurisdiction over the subject matter." *United States v. EmesL- Sims, 355 F. Supp. 513 (1573).*

SEPARATION OF POWERS PREVENTS IRS COLLECTION

OR SUMMONS ACTION

34. The Internal Revenue Service claims to be an agency of the Department of The Treasury, which is the Executive branch, and the separation of powers prevents jurisdiction over the private person of the plaintiff without a "civil action" by Sec. 7401. The Internal Revenue Service has no claim without a civil action under Sec. 7401, therefore, the defendant could have no jurisdiction over the plaintiff's private person and property. There is no other purpose for an IRS summons except to gather information for the collection of tax, and the Code and United States Attorney's Manual are clear regarding the requirements for Sec. 7401 civil action for collection.

35. Certificate of Service signed by the person serving SHALL be evidence of the facts it states on application for enforcement of the summons, and SHALL be served by the Secretary, by an attested copy. Contrary to Revenue Officer Aide Dorothy Mays, the service of the Summons did not contain an attestation, certification, oath or other statement of the validity of the correctness of the summons, as certified on the "service" by Dorothy Mays; and was issued under fraudulent pretense, without proper administrative or legal civil procedure. The judicial device for enforcing the administrative summons is provided by IRC 7402(b) and 7604, which only applies to government

employees and not private citizens!

.36 The appellation of "Taxpayer" is an Internal Revenue Service definition found at Section 7701(14) and does not apply to "private citizens" who are not liable under the "prima facie" law of title or the Secretary of the Treasury and his administrative authority.

> "The reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as persons liable for the tax without an opportunity for JUDICIAL REVIEW of this status BEFORE the appellation of "TAXPAYER" is bestowed upon them and their property seized."
> *Botta v. Scanlon, 314 F. 2d 396 (2d Cir. 1961)*

37. The Summons was blatantly flawed by the fact that IRC 7604(b) Enforcement of Summons applies *ONLY* to IRC sections 6420(e)(2), 6421-(g)(2), 6427(i)(2) and 7602, which is not relevant or material to this instant action. These cited sections are: §6420 Gasoline used on farms; §6421 Gasoline used for certain non-highway purposes; and §6427 Fuels not used for taxable purposes! In each of these sections the alleged laws for the examination of books and witnesses are *ONLY* applicable to these particular cited sections as they relate to retail excise taxes and imposition of tax on petroleum products; and it is *ONLY for* the purpose of ascertaining the correctness of any claim under these cited sections that the Secretary SHALL have the authority granted by paragraphs (1), (2)" and (3) of section 7602. The

implementing regulations listed in the Parallel Table of Authorities and Rules (Exhibit E) for Section 7602 are shown as CFR 27 Parts 170, 296 that relate specifically to Alcohol, Tobacco Products and Firearms. There are no implementing regulations listed for the remaining sections 6420. 6421, and 6427. One agency may not use anothers regulations as clearly stated in:1 CFR Sec. 21.21 General requirements: References.

(c) Each agency shall publish its own regulations in fulltext. Cross-references to the regulations of another of another agency may not be used as substitute for Publication in full text, unless the Office of the Federal Register finds that the regulation meets any of the following exceptions:

(1) The reference is required by court order, statute, Executive order or reorganization plan.

(2) The reference is to regulations promulgated by an agency with the exclusive legal authority to regulate in a subject matter area, but the referencing agency needs to apply those **regulations in its own programs.** (Emphasis added)

NO LEGISLATIVE JURISDICTION

38. There is no legislative jurisdiction for any claimed orders pursuant to Art. 1, Sec. 8, Cl. 17 of the united States Constitution as supported by case law in *United States v. Lopaz No. 93-1260, 115 S. Ct. 1624, 121 L. Ed. 2d 626;*

United States v. DeWitt, 76 US 41 9 Wall 4, 19 L. Ed. 593 (1870); and Case No. 94-CR-140 United States v. George Lyman Wi7son, et al. United States District-Court Eastern District Of Wisconsin.

NO CONSTITUTIONAL JURISDICTION

39. There is no constitutional jurisdiction for any collection action against private Citizens by the Internal Revenue Service, when constitutional jurisdiction is limited to law or equity by Article 3 Section 2, and unless a Private Citizen has specifically waived constitutional rights by some contract that compels performance, and it was made in a willing and definitive manner, there are no legal statutes enacted by Congress to provide jurisdiction for collection action by the IRS. Title 26 USC is merely prima facie evidence of law with no supporting statutes at large that are required to be published in the Federal Register pursuant to 44 USC § 1500 et seq. to provide authority to affect the general public.

EXCLUSIVE JURISDICTION

> "The laws of Congress in respect to those matters [outside of Constitutionally delegated powers] do not extend into the territorial limits of the states, but have force ONLY in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."*Caha v. U. S. , 1 52 U. S. 21 1*

40. The *Caha* court coincides with the statutory law in title 4 U.S.C. S 72. *Public offices; at seat of Government,* which states: All offices attached to the seat of government shall be exercised in the District of Columbia,

and not elsewhere, except as otherwise expressly provided by law.

> "Constitutional restrictions and limitations were NOT applicable to the area of lands, enclaves, territories and possessions over which Congress had exclusive legislative authority."
> *Downes v. Bidwell, 182 U.S. 244*

> *New Orleans v. United States, 35 U.S. (10 Pet., at 737) 662 (1836),* the Supreme Court stated: "Special provision is made in the Constitution for the cession of jurisdiction from the states over places where the federal government shall establish forts or other military works. And it is only in these places, or in territories of the United States, where it can exercise a general jurisdiction.!'

> "It is a well established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears." *Foley Brothers, Inc., v. Filardo, 336 U.S. 281 (1943)*

41. Origin and Authorization at 6-3.111 of the United States Attorneys' Manual Title 6 -Tax Division states that actions to collect taxes on behalf of the government originate by a request and authorization from a delegate of the Secretary of the Treasury, with reference to Section 7401. The request is by a letter addressed to the Assistant Attorney General who then routes them to attorneys' in the appropriate trial section who drafts the complaint -They are then forwarded with a detailed letter setting out the facts and citing the authorities and noting the date the complaint was filed.

THIRD CLAIM FOR RELIEF
(Abuse of legal process against the defendant)

42. The allegations set forth in paragraphs 1 through 40 above are hereby

incorporated bv reference as if fully re-alleged herein.

43. Defendant Marilyn Hall Patel committed malicious abuse of legal process when she claimed authority under 26 U.S.C. §§ 7402 and 7604 and ordered plaintiff to appear and disclose personal and private information to Revenue Officer Francesca Aguilera in violation of his Rights under the Fourth and Fifth Amendment to the United States Constitution, which affords a privacy right against unreasonable searches and 5eizures. Title 26 U.S.C. is merely prima facie law, as clearly cited in 1 U.S.C.A. Sec..204(a) et seq. and it has never been enacted into Positive law. (Exhibit F)

44. As a direct and proximate result of defendant's unconstitutional actions, plaintiff has suffered severe emotional distress and has been injured in his business, personally and has lost good will and his good reputation and standing in the community, lost profits and business opportunities, incurred extensive unnecessary legal search and costs and has otherwise suffered at the hands of defendant.

45. Accordingly, judgment should be rendered against the defendant for the violations of plaintiff's constitutional rights in an amount of $1 million.

46. The defendant committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring plaintiff by the misuse of her vast power of office as a federal district court judge. Plaintiff is

thus entitled to recover punitive damages from the defendant.

> Sec. 204 Codes and Supplements as evidence of the Laws of United States and District of Columbia: citation of Codes and Supplements (a) United States Code.–The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: *Provided, however,* That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

47. The Internal Revenue Code (.16 USC) is clearly omitted from the list of the 22 titles enumerated within Title 1 that were enacted into positive law, because title 26, along with 25 other titles, do not meet the constitutional requirements for enactment.

> The United States Code is only a prima facie statement of the statute law, and statutes collected in it do not change their meaning nor acquire any new force by their inclusion and if construction is necessary, recourse must be had to the original statutes themselves. *Murrell v. W. U. Tel. Co., C.C.A. Fla.1947, 160 F.2d 787.*

> If construction of section of United States Code which has not been enacted into positive law is necessary, recourse must be had to original statutes themselves. *U.S. v. Welden, Mass. 1964, 84 S. Ct. 1082, 377 U.S. 95, 12 L. Ed. 2d 152.*

48. Any claim that the *Internal Revenue Code,* Title .26 USC, is legal evidence of law -must first NULLIFY Title I USC, *General Provisions* which IS legal evidence of the permanent laws and is duly enacted into positive law by

the Congress of the United States pursuant to Article 1, Section 1, Clause 1, (SENTENCE 1) of the Constitution, which mandates that All legislative powers herein granted shall be vested in a Congress of the United States. Title 1 USC is a constitutional law and All courts are mandated by Article 6 Section 2 to obey the Constitution wherein the Constitution shall be the supreme law of the land; and the judges in every state shall be bound thereby; and Section 3 mandates that all executive and Judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution.

TITLE 26 U.S.C. IS ONLY ADMINISTRATIVE LAW

49. Title 26 USC Internal Revenue Code is administrative law that specifies it is exclusively to officers, employees, and elected officials of the United States, and RESTRICTIVELY, to private citizens only when and where applicable, under the due process provisions provided by Title 26 USC Chapter 76, *Judicial proceedings*.

50. Any arguments for powers, duties, rules, regulations, and authorization under the prima facie Title 26 U.S.C., *Internal Revenue Code* are a nullity against "private Citizens" because the claimed authority for Title 26 Sections 7801 and 7805, lies with the Secretary of the Treasury who is an un-elected political appointee of the President, with no authority or jurisdiction over the proper private person or property of Raymond Bailey, Sherwood

pursuant to the Constitution or a congressional act.

51. Careful reading of statutory law in 31 U.S.C. 9 301(a,b) confirms the Secretary of the Treasury is appointed by the President and "approved" only by the single legislative body of the Senate. tio legitimate authority resides in or emanates from an office which was not legitimately created and/or ordained either by state or national constitutions or by legislative enactment. See variously, *United States v. Germane, 99 U.S. 508 (1879), Norton v. Shelby County, 118 U.S. 425, 441, 6 .5.Cc. 1121 (1866),* etc., dating to *Pope v. Commissioner, 138 F.2d 1006, 1009 (6ch Cir. 1943);* where the state is concerned, the most recent corresponding decision was State *v. Pinckney, 276 N.W.2d 433, 436 (Iowa 1979).*

52. 31 U.S.C. S 301(a, b) also specifies that the Secretary is the head of an Executive Department and "is at the seat of government", that is limited to the Executive Department ONLY by the separation of powers of the Constitution under Article II, Section 1, and also LIMITED to "all that part of the territory of the United States included within the present limits of the District of Columbia... (See Title 4 U.S.C. S 71); and "All offices attached to the seat of government [IRS!] shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law." (See 4 U.S.C. S 72); And that the definitions in Title 44 U.S.C. 5 1501 clearly confirm that:

"Federal agency" or "agency" means the President of the United States, or an executive department,... bureau, agency,...but not the legislative or Judicial branches of the Government:" (Emphasis added) (EXHIBIT G)

> 53. This fact is further supported by the court to wit: "Purpose of Interval Revenue Service's statement of procedural rules is to govern the internal affairs of the IRS and those rules do not have the force or effect of law. 5 U.S.C.A. §§ 701-706; Administrative Procedure Act does not provide an independent source for jurisdiction. 5 U.S.C.A. SS 701-706; Administrative Procedure Act only applies to a final agency decision where there is no other adequate remedy. 5 U.S.C.A. §§ 701-706.11 *Einhorn v. DeWitt, 618 F. 2d 347 (1980).*

54. As referenced above, the definition of "Employee" in Title 5 U.S.C. Sec 2105(a) for the purpose of this title (5 USC) means a specific officer or employee of the government and NOT a Private citizen of private entity.

55. The head of an Executive department (Secretary of theTreasury) has no authority "outside" of his "agency" pursuant to statutory law. Title 5 USC § *301. Department regulations,* mandates: "The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its emr)lavees, the distribution and performance of its business, and the custody, use, and preservation of its records, Papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public. (Emphasis added)

56. The power of the Department of the Treasury is limited by the

separation of powers of the Executive branch in Article II Section 1 of the Constitution; and Article VI, Section 3 mandates that all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution ...

> 16 Am Jur 2d 5 310. Distinction between judiciary and administrative agencies.
>
> What essentially distinguished a court from an administrative agency is that under our constitutional system of separation of the three branches of government, Courts are part of the judicial, whereas administrative agencies are part of the executive, branch of the government. Bradly v. Bloomfield, 85 NJL. 506, 89 A 1009 (distinguishing "court" a branch of the government vested with judicial power from ministerial agencies of every kind and character).

57. Title 5 USC § 101. *Executive departments* lists the Department of the Treasury.

58. Title 31 USC § 301. *Department of the Treasury,* states at (a) The Department of the Treasury is an executive department of the United States Government at the seat of the Government. (The ten square mile area known as Washington D.C. is designated as the "seat of Government")

59 . Title 5 U.S.C. S 302. *Delegation of authority.* states in (a)... the "agency" has the meaning given it by section 5721 of this title, which is: (1) (A) an Executive agency.

TITLE 26 5 7401 REQUIRES CIVIL ACTION WITH A COMPLAINT

60. The Internal Revenue Service claims to be an agency of the Department of The Treasury, however, the DEPARTMENT OF THE TREASURY does not list the Internal Revenue Service on its organizational list of seven agencies in Title 31 USC Chapter 3--SUBCHAPTER 1ORGANIZATION If the IRS claim was true, it would be in the Executive branch, and the separation of powers prevents jurisdiction over the private person of the plaintiff without a "civil action" by 7401. The Internal Revenue Service has no claim without a civil actition under Sec. 7401, therefore, the defendant could have no Jurisdiction over the plaintiff's private person and property.

61. Title 26 USC Internal Revenue Code is administrative law that specifies it is exclusively to officers, employees, and elected officials of the United States, and RESTRICTIVELY, to private citizens only when and where applicable, under the due process provisions provided by Title 26 USC Chapter 76, *Judicial proceedings*, at section 7401. This provides the transition between the separation of powers of the Executive and the Judicial branch provided in Article III, Section 1 wherein "The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish." The Internal R6veaue Service has no claim without a civil action under i 7401, therefore, defendant could have no jurisdiction over the plaintiff, a private person.

A-14 cont.

"Being creatures of the legislature, administrative agencies have no general, inherent, or common-law powers, but only those powers conferred upon them by the legislature. ...the source of the powers of administrative agencies lies in statutes, and administrative agencies must find within statutes warrant for the exercise of any authority which they claim."
2 Am Jur 2d § 55.

62. Title 5 USC further mandates at §556(d): "Except as otherwise provided by statute the proponent of a rule or order has the burden of proof... A sanction may not be imposed or rule or order issued except on consideration of the whole record or those Parts thereof cited by a party and supported by and in accordance with the reliable, Probative, and substantial evidence... A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

63. NO statutory law exists without recourse to the United States Statutes at Large, which must be promulgated (published) in the Federal Register pursuant to 44 U.S.C. 1500 et seq. This is confirmed within the administrative regulations at 26 CFR 601.702 *Publication and public inspections* and 5 U.S.C. 552(a)(1) and I CFR Part 20.

1 CFR Sec. 5.2 Documents required to be filed for public inspection and published.

(c) Each document having general applicability and legal effect.

I CFR § 5.4 Publication not authorized.

(c)... Chapter 15 of title 44, United States Code, does not authorize or require the filing and publication of other papers from an agency.

Also supported by case law:

> The United States Code is only a prima facie statement of the statute law, and statutes collected in it do not change their meaning nor acquire any new force by their inclusion and if construction is necessary, recourse must be had to the original statutes themselves. *Murrell v. W. U. Tal. Co., C.C.A. Fla.1947, 160 F.2d 787.*
>
> The official source to find United States law is the Statutes at Large and the United States Code is only prima facie evidence of such laws. *Royer '.s, Inc. v. U. S. , Pa. 1 959, 265 F. 2d 615.*
>
> If construction of section of United States Code which has not been enacted into positive law is necessary, recourse must be had to original statutes themselves. *U.S. v. Welden, Mass. 1964, 84 .5.Cc. 1082, 377 U..5. 95, 12 L. Ed.2d 15–I.*

SUMMARY

There was no constitutional jurisdiction for defendant's action and no legislative, subject matter, personal, judicial, or administrative jurisdiction. Title 26 was never enacted into positive law and no statutes exist for construction of this claim (see Murrell v. W. U. Tel. Co., C.C.A. Fla.1947, 160 F.2d 787);. no implementing regulation was ever published in the Federal Register as required by IRS administrative regulations at 26 CFR 5 601.702(a),(2), (ii), and Parallel Tables of Authorities show that the implementing regulations are *NOT* from 26 CFR, Income tax, but from 27 CFR, Alcohol, Tobacco, and Firearms!

A-14 cont.

Defendant's claim of jurisdiction fails wherein she stated: This proceeding is brought and this court has jurisdiction hereof under Sections 7402(b) and 7604(a) of the Internal Revenue Code (26 U.S.C. SS 7402 and 7604). The claim fails for the six reasons stated below.

1. Title 26 U.S.C. is merely prima facie law, as confirmed in Title 1 U.S.C. § 204(a). It has never been enacted into positive law and has no authority over plaintiff's private person or private property.

2. There can be no jurisdiction or authority from Title 26 without recourse to the United States Statutes at Large, which must be promulgated in the Federal Register pursuant to Title 44 U.S.C. 1500 et seq. to have general effect, but no such statutes have ever been produced.

3. There is no administrative authority over "private Citizens" from Title 26, when the authority cited for this title at §§ 7801 and 7805 is from the Secretary of the Treasury who is an unelected political appointee.

4. There is no administrative authority from §7402 without an 'INSTANCE' from the United States for jurisdiction under A 7402(a) by a complaint or written record of request pursuant to Sec. 7401.

5. There is no administrative summons authorized under S 7402, when the judicial device for enforcing the administrative summons at IRC 7402(b) and 7604, applies only to government employees and not private

Citizens.

6. There are no implementing regulations for summons listed in the Parallel Table of Authorities and Rules (Exhibit E) when Section 7602 is shown as CFR 27 Parts 170, 296 that relate to Tobacco Products and Firearms-and specifically to Alcohol, Tobacco Products and Firearms-and no implementing regulations listed for the remaining sections 6420, 6421, and 6427.- One agency may not use another's regulations as clearly stated in:

1 CFR S 21.21 General requirements: References.

(c) Each agency 5hall publish its own regulations in full text . Cross-references to the regulation of another agency-may not be used as a substitute for publication...

PRAYER FOR RELIEF

WHEREFORE, on each Claim for Relief, plaintiff requests that judgment be entered in his favor against the defendant, awarding the relief sought of one million dollars, his cost of suit and expenses, including reasonable attorney's fees and such other and further relief to which he is justly entitled.

JURY DEMAND

Plaintiff hereby demands trial by jury.

DATED: July 30, 1997 signed RAYMOND B. SHERWOOD

In pro per

EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service,

Petitioners,

v.

RAYMOND B. SHERWOOD,

_____/

Respondent.

No. C-96-1828 MHP

SUPPLEMENTAL ORDER

Respondent Raymond Sherwood has been the subject of investigation by the Internal Revenue Service ("IRS") for potential tax liabilities for the years 1989-1991 and 1994. In connection with that investigation, Revenue Officer Francesca Aguilera issued a summons to Sherwood directing him to appear and produce documents and records relating to his assets and liabilities for those years. After Sherwood failed to appear, the United States and Aguilera petitioned this court to enforce the summons under 26 U.S.C. §§ 7402(b) & 7604(a). The court issued an order to show cause why respondent should not be compelled to appear and produce documents on May 23, 1996. The May 16 order allowed for the respondent to file a written response to the petition and for the government to reply. Sherwood

moved to dismiss the order to show cause and the United States opposed the motion. The court now considers those submissions.

Sherwood argues that the order to show cause was not authorized by the Federal Rules of Civil Procedure and that the court is without subject matter jurisdiction, personal jurisdiction, legislative jurisdiction, and Constitutional jurisdiction. Sherwood also responds to the petition on which the order to show cause was based.

Sherwood's arguments are patently absurd. For as long as citizens have been advancing inventive arguments for why the federal tax laws were never properly enacted or are not applicable to them, the federal courts have been defeating those claims. "For over 75 years, the Supreme Court and the lower federal courts have both implicitly and explicitly recognized the Sixteenth Amendment's authorization of a nonapportioned direct income tax on United States citizens residing in the United States and thus the validity of the federal income tax laws as applied to such citizens.., In re Becraft, 885 F.2d 547, 548 (9th Cir. 1989) (citations omitted).

Despite respondent's fanciful contentions to the contrary, Title 26 of the United States Code was indeed enacted into law and provides this court with subject matter jurisdiction over enforcement of a summons

under internal revenue laws. 26 U.S.C. §§ 7402(b) &: 7604(a). Moreover this court has personal jurisdiction over respondent by virtue of his residence in this district. Fed. R. Civ. P. 4(k)(1)(A); Omni Capital Int'l, Ltd. v. Rudolph Wolff & Co., Ltd., 484 U.S. 97 (1987).- Accordingly, all of respondent's jurisdictional arguments fail.

Finally, Sherwood argues that the court's order to show cause was not authorized by the Federal Rules of Civil Procedure. The order was authorized by Title 26 which gives a district court power to enforce a summons issued by the IRS upon a proper showing. The showing the government must make is slight. United States v. Powell, 379 U.S. 48, 58 (1994); United States v. Abrahams, 905 F.2d 1276, 1280 (9th Cir. 1990). Respondent then has a burden to show that the government is acting in bad faith or that enforcement would be improper. United States v. Dynavac, Inc., 6 F.3d **1407t** 1414 (9th Cir. 1993). While the government met its burden, Sherwood cannot meet his. His responses to the petition are almost entirely premised on the lack of jurisdiction reject above. To the extent that they merely protest the procedural propriety of the investigation and the summons, they are equally unpersuasive.

EXHIBIT A cont.

Accordingly, Sherwood.is HEREBY ORDERED to comply with the order to enforce summons filed by this court on July 30, 1996.

IT IS SO ORDERED.

Dated: July 31, 1996 signed Marilyn Hall Patel

United States District Judge

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service, Petitioners,	NO. C-96-1828-MHP
v.	ORDER ENFORCING SUMMONSES
RAYMOND B. SHERWOOD, Respondent.	

This case having come on for hearing on July 26, 1996, at 10:30 a.m., upon the return of an Order to Show Cause heretofore issued by this Court, and the Court having considered the record herein, including the Verified Petition To Enforce Internal Revenue Summonses, it is hereby

ORDERED that respondent RAYMOND B. SHERWOOD appear before petitioner FRANCESCA AGUILERA or any other designated agent, on or before September 9, 1996, at a time, place or places to be designated by said petitioner to said respondent, and then and there give such testimony and produce such items described in the subject internal

EXHIBIT B cont.

revenue summonses, true copies of which are attached hereto as Exhibit A and B it is further

ORDERED, pending compliance with the subject internal revenue summonses, that respondent Raymond B. Sherwood maintain and preserve all documents and records described in the subject internal revenue summonses which are in his possession or control and that respondent Raymond B. Sherwood refrain from destroying said documents and records, and from taking any other action which would remove said documents from his possession or control, or would in any other way prevent production of said documents and records pursuant to the summonses.

ORDERED that the Case Management/Status Conference set for August 16, 1996, at 9:30 a.m. be vacated to be reset, if necessary, at a later date.

ORDERED this *29th* day of *July*, 1996, at San Francisco, California.

signed Marilyn Hall Patel

UNITED STATES DISTRICT JUDGE

EXHIBIT B cont.

Summons

Income Tax Return

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1994. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding income you received for the years 1994. These records and documents include, but are not limited to: Forms W-2 (Wage and Tax Statement), Forms 1099 for interest and dividend income, employee earnings statements, and records of deposit with banks or other financial institutions. Also include all other books, records, documents, and receipts for income from, but not limited

EXHIBIT B cont.

to the following sources: wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state, or local tax refunds, annuities, life insurance policies, endowment contracts, pensions, estates, trusts, discharge of indebtedness, distributive shares of partnership income, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money). Including all documents and records about any income you assigned to any other person or enity. IRS will use this information to prepare a federal income tax return for the following year(s) when you don't file a return. 1994. We have attached a blank return to guide you in producing the necessary documents and records. Business address and telephone number of Internal Revenue Service officer named above. 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598. Place and time for appearance: At 185 Lennon Lane, Ste. 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 A.M.

Issued under the authority of the Internal Revenue Code this 9th day of February , 1996. Signed F. Aguilera, Revenue Officer.

EXHIBIT B cont.

Summons

Collection Information Statement

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1989, Dec. 31. 1990, Dec. 31, 1991. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS)officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks,

EXHIBIT B cont.

savings accounts passbooks, records or certificates of deposit for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to : all bank statements, checkbooks, canceled checks, savings account passbooks,, records, or certificates of deposit for the period From Jan 1, 1995 to Jan 15, 2006. Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes, and judgments receivable, and all current life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Place and time for appearance: At 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 o'clock A.M.

Issued under authority of the Internal Revenue Code this 7th day of February 1996. Signed F. Aguilera Revenue Officer.

Exhibit C

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
Plaintiff

No. C- 96-1828 (MHP)

v.

RAYMOND B. SHERWOOD
Respondent

_____/

PAGES 1 –16

SAN FRANCISCO, CALIFORNIA
JULY 26, 1996

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARILYN HALL PATEL

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
TAX DIVISION
FEDERAL BUILDING, 450 GOLDEN GATE AVE.
SAN FRANCISCO, CALIF. 94102

BY: DAVID DENIER, ASSISTANT UNITED STATES ATTORNEY

REPORTED BY: KAY C. HILL, CSR, RMR
CSR #2368

EXHIBIT C cont

THE CLERK: CIVIL ACTION 96-1828, UNITED STATES VERSUS RAYMOND SHERWOOD FOR AN ORDER TO SHOW CAUSE.

COUNSEL, YOUR APPEARANCES, PLEASE.

MR. SHERWOOD: RAYMOND SHERWOOD RESPONDENT.

MR. DENIER: DAVE DENIER, UNITED STATES TAX DIVISION. GOOD MORNING, YOUR HONOR.

THE COURT: GOOD AFTERNOON.

MR. SHERWOOD, WHERE DID YOU GET THE IDEA THAT THE INTERNAL REVENUE CODE HAS NOT BEEN VALIDLY ADOPTED, THAT SOMEHOW THERE IS NO CONSTITUTIONAL JURISDICTION OVER YOU, OR OTHER KIND OF JURISDICTION OVER YOU, AND THAT YOU ARE NOT SUBJECT TO THE INTERNAL REVENUE CODE AND SO FORTH. WHERE DID YOU GET THOSE IDEAS FROM? WHAT MAKES YOU DIFFERENT FROM EVERY OTHER CITIZEN IN THIS COUNTRY, OR NOT EVEN CITIZEN, JUST CITIZENS, PERSONS WHO LIVE HERE AND WORK HERE AND ARE ALIENS, OR ONES WHO ARE NOT HERE LAWFULLY PLUS PAY TAXES?

MR. SHERWOOD : I MADE NO CLAIM OF BEING A RESIDENT ALIEN OR ANYTHING LIKE THAT, YOUR HONOR.

THE COURT: HOW DO YOU -- IF YOU ARE-A CITIZEN, HOW DO YOU AVOID PAYING TAXES, OR BEING ACCOUNTABLE FOR A

EXHIBIT C cont.

DETERMINATION AS TO WHAT TAX LIKBILITY YOU MAY HAVE, WHAT SETS YOU APART FROM ALL THOSE OTHER PEOPLE, ALL OF US WHO FILE INCOME TAX RETURNS AND HAVE TO PAY TAXES?

MR. SHERWOOD: THAT'S NOT MY POSITION, REALLY. BUT BEFORE WE GO – BEFORE I GO INTO THAT, I WOULD LIKE TOGET A COUPLE OF QUESTIONS ANSWERED FIRST, IF I MAY. **IS THERE A COMPLAINT THAT HAS BEEN FILED IN THIS MATTER?** (EMPHASIS MINE)

THE COURT: THERE IS AN ORDER TO SHOW CAUSE, AND THAT IS HOW THIS PROCEEDING, THIS TYPE OF A PROCEEDING IS COMMENCED, BECAUSE THE IRS HAS THE AUTHORITY TO C0MPEL YOU TO COME BEFORE IT. WHEN YOU DON'T APPEAR AS REQUIRED, THEN THEY ASK THE COURT FOR WHAT IS CALLED AN ORDER TO SHOW CAUSE WHY YOU SHOULD NOT BE COMPELLED TO APPEAR. AND THAT'S THE DOCUMENT WHICH THEN INITIATES THE COURT PROCEEDING.

MR. SHERWOOD: OKAY, SO **THERE IS NO COMPLAINT**FILED AT THE PRESENT TIME?

THE COURT: **THERE IS NO COMPLAINT** AND THERE NEED NOT BE IN THIS KIND OF A PROCEEDING. THERE IS A VERIFIED PETITION THAT *IS* IN ESSENCE LIKE A COMPLAINT AND THAT APPRISES YOU OF ALL THE

EXHIBIT C cont.

FACTS THAT SUPPORT THE REQUEST FOR THE ORDER TO SHOW CAUSE.

MR. SHERWOOD: WHICH BRINGS ME TO THE POINT, YOUR HONOR, WHY IS A STATUS CONFERENCE SCHEDULED FOR.-AUGUST 16TH IF **THERE IS NO COMPLAINT?**

THE COURT: STATUS CONFERENCE IS AUTOMATICALLY SET SO THAT IF, IN FACT – ESSENTIALLY IT IS SO WE DON'T LOSE CONTROL OF THE CASE. WE KNOW THERE IS A CASE THERE AND THE CASE HAS NOT BEEN COMPLIED WITH. FOR EXAI-IPLE, IN MOST CASES, ONCE THE ORDER TO SHOW CAUSE IS ISSUED, A PERSON GETS AHOLD OF THE U.S. ATTORNEY AND MAKES THE NECESSARY ARRANGEMENTS TO COMPLY WITH THE ORDER. SOMETIMES THAT DOESN'T HAPPEN, SOMETIMES A PERSON HASN'T BEEN SERVED, OR WHATEVER. WE HAVE A STATUS CONFERENCE, OR SOMETIMES THEY WILL COME IN, AND AFTER I HAVE ORDERED CERTAIN THINGS BE DONE, WE HAVE TO CHECK ON COMPLIANCE AND SO FORTH, AND THEY HAVE A STATUS CONFERENCE. IT HAS NOTHING DO WITH WHAT THE DOCUMENT IS THAT INITIATES THE ACTION, ALBEIT MOST CIVIL CASES DO COMMEIICE WITH THE FILING OF A COMPLAINT, BUT THESE ARE DIFFERENT TYPE OF ACTIONS PURSUANT TO THE INTERNAL REVENUE CODE.

EXHIBIT C cont.

MR. SHERWOOD: MY RESEARCH WENT TO IF THERE WAS A JURISDICTION IN THIS ACTION THERE HAS TO BE A COMPLAINT.

THE COURT: THAT'S BECAUSE YOU ARE LOOKING AT THE FEDERAL RULES OF CIVIL PROCEDURE, WHICH ARE GENERAL IN THEIR NATURE, AND GENERALLY APPLY TO CIVIL ACTIONS, BUT THERE ARE OTHER TYPES OF ACTIONS FOR WHICH THERE ARE STATUTORY, SPECIFIC STATUTORY PROVISIONS, AS THERE ARE WITH THESE TYPE OF PROCEEDINGS.

MR. SHERWOOD: SHOULD NOT THOSE BE ADDRESSED OR PUT FORWARD SO I KNOW HOW TO RESPOND TO THEM?

THE COURT: THIS IS WHAT THEY HAVE DONE, THEY HAVE GIVEN YOU – THE COURT HAS ISSUED AN ORDER TO SHOW CAUSE, IT IS BASED UPON THE VERIFIED PETITION SETTING FORTH THE FACTS AS TO WHAT WAS DONE OR WASN'T DONE, AND IS REQUIRED UNDER THE INTERNAL REVENUE CODE. AND IT TELLS YOU WHAT THEY ARE SEEKING. AND THAT IS VARIOUS ITEMS THEY ORIGINALLY SOUGHT BY THE AUTHORITY THEY HAD; NAMELY, BY THEIR OWN SUMMONS AND WHEN YOU DON'T COMPLY WITH THAT SUMMONS AND THEY HAVE TO COME INTO COURT

EXHIBIT C cont.

AND SEEK BY THIS PROCEDURE TO HAVE YOU COME BEFORE THE COURT AND EXPLAIN WHY YOU SHOULDN'T BE COMPELLED TO PROVIDE WHAT IS BEING SOUGHT, OR TO GET THE IMPETUS OF THE COURT TO THEN MAKE YOU REALIZE YOU HAVE TO RESPOND TO THIS, YOU CAN"T JUST IGNORE A SUMMONS BY THE INTERNAL REVENUE CODE.

MR. SHERWOOD: YOUR HONOR UNDERSTMIDS THAT I DID RESPOND TO THE SUMMONS OF THE INTERNAL REVENUE SERVICE?

THE COURT: YES, I SAW WHAT YOU SUBMITTED IN RESPONSE TO IT.

MR. SHERWOOD: A PETITION TO QUASH. BECAUSE THERE WAS NO COURT TO SEND THE PETITION TO QUASH TO, I HAD TO SEND IT TO WHOEVER SENT THE ORIGINAL SUMMONS.

THE COURT: WELL, IN OTHER WORDS, YOU DIDN'T RESPOND TO THE SUMMONS BY PROVIDING WHAT THEY WANTED AND WHAT THEY SAID THEY ARE ENTITLED TO, SO THEY HAVE NOW FILED THIS PETITION HERE TO GET YOU TO DO THAT.

MR. SHERWOOD: AND MY POINT IS, BECAUSE WE ARE HERE TODAY ON THIS SUMMONS IS EXACTLY WHERE THE LAW GOES TO.

THERE IS **NO LAW** THAT COMPELS ME TO ANSWER AN IRS SUMMONS, THAT I CAN FIND.IN FACT, IF WE GET INTO IT, BY THE NEWT GINGRICH, TOM FOLEY, TIP O'NEIL, SPEAKERS OF THE HOUSE, HEADING PAGE TO

EXHIBIT C cont.

THE HOUSE OF REPRESENTATIVES OF DOCUMENTS SAYS TITLE 26 HAS NEVER BEEN ENACTED INTO THE LAW WHY AM I COMPELLED TO ANSWER THAT IF IT HAS NOT BEEN ENACTED INTO LAW?

THE COURT: WHERE DID YOU EVER GET THAT IDEA FROM?

MR. SHERWOOD: WELL, I AM READING IT, IT IS IN MY EVIDENCE, AND I HAVE, IF YOUR HONOR PLEASES, MORE SUBSTANTIATING EVIDENCE TO THAT FACT.

THE COURT: WELL, THE COURTS HAVE DEALT WITH THIS SO MANY TIMES IT ISN'T FUNNY, INCLUDING THE SUPREME COURT.AND THE NOTION THAT THE INTERNAL REVENUE CODE WAS NEVER ADOPTED, WHY DON'T YOU ASK NEWT GINGRICH OR TOM FOLEY – WELL, YOU WON'T BE ABLE TO ASK TIP O'NEIL, SADLY, BUT IF THEY PAY TAXES, AND UNDER WHAT AUTHORITY DO THEY, ARE THEY JUST DOING IT VOLUNTARILY BECAUSE THEY LOVE THEIR COUNTRY AND NOT BECAUSE THEY ARE REQUIRED TO BY TITLE 26 OF THE REVENUE CODE?

MR. SHERWOOD: YOUR HONOR, I PAY TAXES. TITLE 26, BY THE EVIDENCE THAT I HAVE PRESENTED, HAS NOT BEEN ENACTED INTO LAW.

THEY MAY PERSUADE YOU, BUT THEY HAVE NEVER PERSUADED ANY COURT, AND THEY DON'T PERSUADE ME.

MR. SHERWOOD: MAY I GO TO THE SUMMONS ITSELF IN THE VERIFIED PETITION OF MRS. AGUILAR?

THE COURT; WHAT IN PARTICULAR ARE YOU REFERRING TO?

MR. SHERWOOD: WHAT I AM PARTICULARLY REFERRING TO IS IN HER VERIFIED PETITION, SHE SAYS SHE HAS NO RECORDS TO ESTABLISH A LIABILITY FOR ME TO RESPOND. IF SHE HAS NO RECORDS TO ESTABLISH A LIABILITY, WHAT BASIS DID SHE USE TO INITIATE COLLECTION ACTION IN SEPTEMBER OF 1995. NOW EITHER SHE HAD RECORDS OR SHE DOESN'T HAVE RECORDS. IF SHE HAS THE RECORDS, THEN SHE HAS LIED IN HER VERIFIED PETITION. AND IF SHE DOESN'T HAVE THE RECORDS, THEN SHE HAD NO BASIS FOR PUTTING COLLECTION ACTION ON ME IN SEPTEMBER OF 1995.

MR. DENIER: YOUR HONOR, IF I MAY ASSIST THE COURT, THERE WERE TWO SUMMONS, ONE WAS A COLLECTION SUMMONS WITH RESPECT TO COLLECTIONS ALREADY MADE FROM 1989 TO 1991. THE SECOND IS A SUMMONS FOR DOCUMENTS THAT WOULD HELP HER DETERMINE HIS 1984 TAX LIABILITY. SO MR. SHERWOOD IS A LITTLE CONFUSED HERE. THE COLLECTION ACTUALLY DOESN'T RELATE TO 1994 BECAUSE WE

DON'T HAVE AN ASSESSMENT THEN, WE HAVEN'T DETERMINED HIS LIABILITY FOR 1994.

THE COURT: WAS IT 1994?

MR. DENIER: 1994. IS THE SUMMONS SEEKING INFORMATION TO DETERMINE HIS LIABILITY FOR THAT YEAR. THERE HAVE ALREADY BEEN DETERMINATIONS AND ASSESSMENTS MADE WITH RESPECT TO THE EARLIER YEARS, AND FOR THOSE YEARS WE ARE SEEKING INFORMATION OF ASSETS AND LIABILITIES SO WE CAN DETERMINE HOW TO COLLECT THOSE LIABILITIES.

THE COURT: FOR WHAT YEARS HAS -- IN THE PAST HAS MR. SHERWOOD FILED INCOME TAX STATEMENTS?

MR. DENIER: I DON'T RAVE THAT INFORMATION BEFORE ME, BUT YOU CAN ASK MR. SHERWOOD THAT INFORMATION.

MR. SHERWOOD: I FILED ALL YEARS EXCEPT 1989, 19901 1991 AND 1994. ALL OTHER YEARS RAVE BEEN FILED. I THINK IF YOU LOOK AT WHAT SHE HAS PRESENTED IN HER VERIFIED PETITION, I SEE NO DIFFERENCE BETWEEN 1989, '90 AND '91 IN ONE PARAGRAPH, AND THEN GOING FOR 1994 IN THE OTHER PARAGRAPH.

THE COURT: WELL, THEY SUBMITTED -- YOU RECEIVED, I ASSUME, THE NOTICE OF LEVY ON WAGES AND SO FORTH, AND IT LISTS AT LEAST

WHAT THEY KNOW AS OF THAT TIME, BUT THEY LIST FOR 1989, 1990, 1991. NOW, YOU DIDN'T FILE RETURNS IN THOSE YEARS?

MR. SHERWOOD: NO, MA'AM, I DID NOT.

THE COURT: AND SO YOU ARE NOT BEING VERY HELPFUL WITH THEM IN TRYING TO DETERMINE WHAT TAXES YOU MAY BE LIABLE FOR IF YOU DON'T FILE A RETURN.

MR. SHERWOOD: BUT THEY INITIATED THE COLLECTION ACTION FOR 1989, 1990 AND 1991 WHEN THEY SAY THEY HAD NO RECORDS TO DO THIS.

THE COURT: WELL, THAT'S NOT TRUE. THERE ARE EXHIBITS THAT ARE APPENDED HERE THAT REFLECT PAYMENTS FOR -FROM BUFFALO AIRWAYS. WERE YOU EMPLOYED BY SOMETHING CALLED BUFFALO

MR. SHERWOOD: YES, MA'AM.

THE COURT: THAT IS AN AIRLINE?

MR. SHERWOOD: YES, MA'AM, KANSAS CITY, MISSOURI.

THE COURT: WHAT IS IT WITH PILOTS, OR AIRLINE EMPLOYEES, DO THEY HAVE SOME NOTION THAT -- SOMEBODY SENDS THEM LITERATURE AROUND THE AIRLINES AND TELLS THEM THEY DON'T HAVE TO PAY TAXES?

MR. SHERWOOD: I HAVE NEVER BEEN INVOLVED IN ANY OF THAT.

EXHIBIT C cont.

THE COURT: IT WOULDN'T BE THE FIRST TIME I HAVE HAD AIRLINE EMPLOYEES WHO DIDN'T THINK THEY NEEDED TO PAY TAXES.

MR. DENIER: MR. SHERWOOD IS CONFUSING THINGS. THE SUMMONS, WITH RESPECT TO '89, '90 AND '91 IS PURELY A COLLECTION SUMMONS. HOW THEY DETERMINED HIS TAX LIABILITY, THEY DETERMINED FOR WHATEVER INFORMATION THEY COULD GET FOR THOSE YEARS, BUT THAT IS SEPERATE AND DISTINCT FROM 1994. AND PROBABLY, TO FURTHER HELP HIM ALONG, SIMPLY BECAUSE WE MAY HAVE SOME INFORMATION TO DETERMINE LIABILITY DOESN'T MEAN WE ARE PROHIBITED FROM SUMMONING INFORMATION FROM HIM TO MORE ACCURATELY DETERMINE HIS CORRECT TAX LIABILITY. YOU MIGHT NOTICE IN THE SUMMONS WE ASKED FOR INFORMATION WHICH COULD ESTABLISH DEDUCTIONS. I MEAN, WE ARE IN A SITUATION WHEN A TAX PREPARER LIKE MR. SHERWOOD DOES NOT FILE A RETURN, OR REFUSES TO TRY AND RECONSTRUCT HIS TAX RETURN, WE MAY HAVE, IF HE IS A W-2 WAGE EARNER, WE MAY HAVE INFORMATION INDICATING SOME INCOME. WE MAY HAVE INFORMATION OF 1099S FROM BANKS INDICATING OTHER INCOME. WE HAVE PROBABLY NO INFORMATION, EXCEPT MAYBE A MORTGAGE, HE MIGHT HAVE INFORMATION FILED. I AM NOT SURE THEY HAVE ACCESS TO THAT TO DETERMINE HIS

DEDUCTIONS. SO ALL SHE IS TRYING TO DO IS HELP HIM GET AN ACCURATE DETERMINATION OF HIS TAX LIABILITY, AND WE ARE ENTITLED TO SEEK THAT INFORMATION. WE ARE NOT LIMITED TO WHAT LITTLE INFORMATION WE CAN FIND. WE ARE ENTITLED TO GO AHEAD AND TRY TO DETERMINE THE CORRECT TAX LIABILITY.

THE COURT: FOR -89, '90 AND '91, THEY HAVE ALREADY MADE THAT DETERMINATION BASED UPON WHAT WAS AVAILABLE TO THEM. THEY CANNOT DO THAT FOR 1994 BECAUSE THEY DON'T HAVE ANY INFORMATION. BUT YOU FILED A RETURN I N '93?

MR. SHERWOOD: YES, MA'AM, AND 1992. AND ON JULY THE 16TH, I RECEIVED A CORRECTION FROM MRS. AGUILAR TO A LEVY OR LIEN ON SOME PROPERTY THAT I HAVE, AND SHE INCLUDES 1992. SHE ISSUED TWO NOTICES OF LIEN FOR THE SAME YEARS IN QUESTION, AND THE FIGURES DON'T JIVE IN EITHER ONE OF THEM. ON ONE OF THEM SHE INCLUDED 1992, AND IT IS HARD FOR ME TO HAVE ANY CONFIDENCE SHE IS TRYING TO HELP ME IN DETERMINING THE TAX LIABILITY WHEN SHE KEEPS RUNNING AROUND AND ADDING OTHER THINGS TO IT.

THE COURT: HOW WAS SHE SUPPOSED TO DETERMINE IT AT ALL FOR 1994, OR ANY OF THESE OTHER YEARS, WHEN YOU DON'T FILE RETURNS?

EXHIBIT C cont.

DID YOU HAVE INCOME IN 1994?

MR. SHERWOOD: SOME, YES, MA-AM.

THE COURT: . WERE YOU EMPLOYED BY SOMEBODY ELSE OR SELF-EMPLOYED?

MR. SHERWOOD: PARTIALLY EMPLOYED. I WAS LAID OFF. I WORKED SOME, AND SOME I DIDN'T WORK.

THE COURT: WELL, YOU NEED TO FILE A RETURN. AND THEN YOU CAN LET THEM KNOW HOW MUCH YOU EARNED AND HOW MANY DEDUCTIONS. AND IT MAY BE YOU ARE ENTITLED TO A REFUND, BUT THAT DOESN'T HAPPEN IF YOU DON'T FILE A RETURN. I AM CURIOUS AS TO WHY YOU THINK YOU WERE EXEMPT IN '89, '90 AND '91 AND '94 BUT NOT IN '921 '93 AND MAYBE EARLIER YEARS.

MR. SHERWOOD: I DON'T WISH TO BORE THE COURT WITH THE PAST, BUT I WAS BEFORE THE JUDGE IN 1982-ISH. I DON'T KNOW WHETHER YOU REMEMBER OR NOT, BECAUSE OF A LOT OF STUFF WHERE THE IRS HAD PROMISED A REFUND OF AN OVERPAYMENT THAT THEY NEVER GAVE ME, THEY DENIED ME AND FORCED ME TO GO TO COURT TO GET THE MONEY. YOUR HONOR GRANTED MY COURT CASE TO GIVE ME THE MONEY, AND I NEVER RECEIVED THE MONEY. IT WAS APPLIED TO WHAT I THINK WAS AN ERRONEOUS 1988 CLAIM, BOGUS CLAIM BY THE IRS.

AND AT THAT TIME I FIGURED, RIGHT OR WRONG, THAT I WAS THE VICTIM OF ABUSE FOR CHALLENGING THEM AND THAT I WAS GOING TO STOP FOR FIVE YEARS. THAT WAS MY DECISION.

THE COURT: THEN YOU WOULD RATHER FIND YOURSELF IN A POSITION AT SOME POINT BEING CHARGED CRIMINALLY? THAT MAKES NO SENSE.. WELL, AT ANY RATE, I AM GOING TO ISSUE THE ORDER TO SHOW CAUSE, AND YOU ARE GOING TO BE COMPELLED WITHIN A CERTAIN PERIOD OF TIME TO TURN OVER THE DOCUMENTS AND RECORDS, AND SO FORTH, THAT ARE SOUGHT BY VIRTUE OF THE ORDER TO SHOW CAUSE. AND OTHERWISE RESPOND TO QUESTIONS. AND WHAT IS A REASONABLE PERIOD OF TIME AS FAR AS BOTH PARTIES ARE CONCERNED IN WHICH TO ACCOMPLISH THAT?

MR. DENIER: YOUR HONOR, I HAVE A PROPOSED ORDER WHICH ALLOWS MR. SHERWOOD TWO WEEKS, AND ASKS HIM TO APPEAR BY AUGUST 9TH. THE COURT COULD MODIFY THAT. WE THINK HE HAS HAD THE SUMMONS SINCE FEBRUARY, HE HAS HAD FIVE MONTHS TO ACCUMULATE WHATEVER DOCUMENTS OR INFORMATION HE NEEDS.

THE COURT: COULD YOU HAVE YOUR BOOKS AND RECORDS IN HERE IN TWO WEEKS?

EXHIBIT C cont.

MR. SHERWOOD: MAY I ASK A COUPLE OF QUESTIONS BEFORE I RESPOND TO THAT, PLEASE?

THE COURT: YES.

MR. SHERWOOD: DO I HAVE AN APPEAL RIGHT TO THIS DECISION THAT YOU ARE GRANTING THAT I HAVE TO SHOW CAUSE?

THE COURT: YES, YOU DO. BUT YOU MAY WANT TO TAKE A LOOK AT SOME OF THOSE APPELLATE DECISIONS, BECAUSE MORE THAN ONE PERSON – YOU CAN TELL ME HOW MANY – HAVE BEEN SANCTIONED BY THE COURT OF APPEALS; IN OTHER WORDS, IMPOSE MONETARY SANCTIONS PAYABLE TO THE COURT FOR ESSENTIALLY WHAT THEY VIEW AS FRIVOLOUS APPEALS, SO YOU MAY WANT TO TAKE A LOOK AT THOSE CASES.

MR. SHERWOOD: MY SECOND PROBLEM IS THAT WE HAVE HAD A MAJOR ACCIDENT IN MY HOUSE, AND MY WIFE WAS BUSTED UP. I HAVE HER HOME FROM THE HOSPITAL, AND MOST OF MY TIME IS SPENT TAKING CA.RE OF HER. AND IF I HAD TO RESPOND TO THIS, I WOULD LIKE A LITTLE LONGER PERIOD OF TIME.

THE COURT: 30 DAYS?

MR. SHERWOOD: 30 OR 45. 45 WOULD REALLY BE A HELP, IF I COULD HAVE 45 DAYS.

EXHIBIT C cont.

THE COURT: YOU HAVE WAITED THIS LONG, YOU ARE UNDER AN ORDER, AND IF YOU WOULD INCLUDE IN THAT AKID *MAKE* SURE NO RECORDS, BOOKS OR DOCUMENTS, ANYTHING AT ALL THAT MAY RELATE TO ANYTHING THAT WOULD BE HELPFUL IN ASSESSING TAX LIABILITY, NONE OF THAT IS TO BE DESTROYED.

MR. SHERWOOD: I DON'T OPERATE THAT WAY, YOUR HONOR.

THE COURT: I JUST WANT TO MAKE IT CLEAR. WOULD YOU ADD THAT TO THE ORDER THEN, AND SUBMIT IT, AND WE'LL PUT IT FOR 45 DAYS.

MR. DENIER: I WILL, YOUR HONOR.

THE COURT: OKAY. MR. SHERWOOD:

MR. SHERWOOD: AND YOU WILL COPY ME ON IT?

THE COURT: YOU WILL GET A COPY WITH THE COURT AFTER I HAVE SIGNED IT AND IT HAS BEEN FILED.

MR. SHERWOOD: NICE TO SEE YOU AGAIN.

THE COURT: NOW FILE YOUR RETURNS AND DON'T GET INTO TROUBLE, MR. SHERWOOD.

EXHIBIT C cont.

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

I, KAY C. HILL, A CERTIFIED SHORTHAND REPORTER FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY: THAT I WAS PRESENT AT THE TIME OF THE ABOVE DESCRIBED PROCEEDINGS; THAT I TOOK DOWN IN MACHINE SHORTHAND NOTES ALL PROCEEDINGS HAD AND TESTIMONY TAKEN; THAT I THEREAFTER TRANSCRIBED SAID SHORTHAND NOTES WITH THE AID OF A COMPUTER, THE ABOVE AND FOREGOING BEING A FULL, TRUE AND CORRECT TRANSCRIPTION OF SAID NOTES, AND A FULL, TRUE AND CORRECT TRANSCRIPT OF ALL TESTIMONY TAKEN AND PROCEEDINGS HAD.

I FURTHER CERTIFY THAT I AM NOT COUNSEL FOR, NOR RELATED TO ANY PARTY TO THIS ACTION, NOR DO I HAVE ANY INTEREST IN THE ACTION.

signed KAY C. HILL, CSR 2368

DATED:

KAY C. HILL, CSR 2368

EXHIBIT D

MICHAEL J. YAMAGUCHI (California State Bar No. 84984)

United States Attorney

JAY R. WEILL (California State Bar No. 75434)

Assistant United States Attorney, Chief, Tax Division

DAVID L. DENIER (California State Bar No. 95024.)

Assistant United States Attorney ,10th Floor Federal Building

450 Golden Gate Avenue, Box 36055

San Francisco, California 94102, Telephone: (415) 436-6888

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service, Petitioners, v. RAYMOND B. SHERWOOD, Respondent.	**VERIFIED PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONSERS**

Petitioners, the **UNITED STATES OF AMERICA** and its Revenue Officer, **FRANCESCA AGUILERA,** allege and petition as follows:

EXHIBIT D cont.

1. This proceeding is brought and this Court has jurisdiction hereof under Sections 7402(b) and 7604(a) of the Internal Revenue Code (26 U.S.C. Sec. 7402 and 7604).

2. Petitioner **FRANCESCA AGUILERA** is and at all times mentioned herein was an employee and officer of the Internal Revenue Service of the United States Department of the Treasury authorized by the Secretary of the Treasury to perform the duties and take the actions described in Sections 7602 and 7603 of the Internal Revenue Code (26 U.S.C. 7602 and 7603), under Treasury Regulations 301.7602-1 and 301-7603-1 (26 C.F.R. _ 301.7602-1 and 301.7603-1).

3. Petitioner FRANCESCA AGUILERA is and at all times mentioned herein was attempting in the course of her authorized duties to collect certain unpaid federal tax liabilities of RAYMOND B. Sherwood for the years ending December 31, 1989, December 31, 1990 and December 31, 1991.

4. Petitioner FRANCESCA AGUILERA is and at all times mentioned herein was attempting in the course of her authorized duties to have respondent produce for inspection, examination and copying by petitioner certain records possessed by respondent which are relevant and material to her attempt to collect the aforementioned federal tax

liabilities of RAYMOND B. SHERWOOD, for the periods stated in paragraph 3 above.

5. Petitioner FRANCESCA AGUILERA is and all times mentioned herein was attempting in the course of her authorized duties to determine the correct federal income tax liability of RAYMOND B. SHERWOOD for the taxable year 1994.

6. Petitioner FRANCESCA AGUILERA is and all times mentioned herein was attempting in the course of her authorized duties to have respondent produce for inspection, examination and copying by petitioner certain records possessed by respondent which are relevant and material to her attempt to determine the aforementioned federal tax liability of RAYMOND B. SHERWOOD for the period stated in paragraph 5 above.

7. Respondent RAYMOND B. SHERWOOD's last known address in 1612 Merian Drive, Pleasant Hill, California, 94523 which is within the venue of this Court.

8. Petitioner FRANCESCA AGUILERA is informed and believes that said respondent is in possession and control of testimony, books, records, papers and other data covered by said petitioner's inquiries and to which petitioners do not otherwise have access, possession, or control.

EXHIBIT D cont.

9. On February 7, 1996, petitioner FRANCESCA AGUILERA served a summons on said respondent in respect to the subject matter described in paragraphs 3, 4, and 8 above, by leaving an attested copy of the summons at respondent's last known address as described in paragraph 7 above. The requirements of said summons are self-explanatory, and a true copy thereof is attached hereto as EXHIBIT and is hereby incorporated by reference as a part of this petition.

10. On February 7, 1996, petitioner FRANCESCA AGUILERA served a summons on said respondent in respect to the subject matter described in paragraphs 5, 6 and 8 above, by leaving an attested copy of the summons at respondent's last known address as described in paragraph 7 above. The requirements of said summons are self-explanatory and a true copy thereof is attached hereto as Exhibit B and is hereby incorporated by reference as part of this petition.

11. The items sought by the summons described in paragraph 9 above are relevant to and can reasonably be expected to assist in the collection of the above-mentioned federal tax liabilities of RAYMOND B. SHERWOOD for the years stated in paragraph 3 above. it was and now is essential to completion of petitioner's inquiry regarding the financial information of respondent that respondent produce the items demanded

by said summons.

12. The items sought by the summons described in paragraph 10 above are relevant to and can reasonable be expected to assist in the determination of the above-mentioned federal tax liability of RAYMOND B. SHERWOOD for the year stated in paragraph 5 above. It was and now is essential to completion of petitioner's inquiry that respondent produce the items demanded by said summons.

13. The respondent did not appear on February 21, 1996, as requested in the summonses.

WHEREFORE, having stated in full its petition against the respondents, petitioners pray for enforcement of the subject summonses as alleged and set forth above as follows:

A. That the named respondent herein be ordered to appear and show cause before this Court, if any, why he should not be compelled by this Court under 26 U.S.C. 5 7604(a) to give such testimony and to produce such items as are required in the herein above-described summonses;

B. That respondent be ordered by the Court to appear before the petitioner FRANCESCA AGUILERA, or any other designated agent, at a time and place directed by the Court and then and there give such

testimony and produce such items as is required by the summonses; and

C. That the Court grant the petitioner UNITED STATES OF AMERICA its costs in this proceeding and such other and further relief as may be necessary and proper.

MICHAEL J. YAMAGUCHI, United States Attorney

DAVID L. DENIER, Assistant United States Attorney

Tax Division

EXHIBIT D cont.

VERIFICATION

I, FRANCESCA AGUILERA, pursuant to 28 U.S.C. 1746, declare and states as follows:

I am a duly employed revenue officer in the Walnut Creek, California office of the Internal Revenue Service of the United States Treasury Department. I am one of the petitioners making the foregoing petition. I have read and know the entire contents of the foregoing petition, and all statements of fact contained in said petition are true to the best of my own personal knowledge and recollection, and as to those facts stated upon information and belief, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on (unreadable), 1996 at Walnut Creek, California.

Signed Francesca Aguilera

FRANCESCA AGUILERA

EXHIBIT D cont.

Summons

Collection Information Statement

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1989, Dec. 31. 1990, Dec. 31, 1991. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS)officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks,

EXHIBIT D cont.

savings accounts passbooks, records or certificates of deposit for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to : all bank statements, checkbooks, canceled checks, savings account passbooks,, records, or certificates of deposit for the period From Jan 1, 1995 to Jan 15, 2006. Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes, and judgments receivable, and all current life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Place and time for appearance: At 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 o'clock A.M.

Issued under authority of the Internal Revenue Code this 7th day of February 1996. Signed F. Aguilera Revenue Officer.

EXHIBIT D cont.

Summons

Income Tax Return

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1994. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding income you received for the years 1994. These records and documents include, but are not limited to: Forms W-2 (Wage and Tax Statement), Forms 1099 for interest and dividend income, employee earnings statements, and records of deposit with banks or other financial institutions. Also include all other books, records, documents, and receipts for income from, but not limited

EXHIBIT D cont.

to the following sources: wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state, or local tax refunds, annuities, life insurance policies, endowment contracts, pensions, estates, trusts, discharge of indebtedness, distributive shares of partnership income, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money). Including all documents and records about any income you assigned to any other person or enity. IRS will use this information to prepare a federal income tax return for the following year(s) when you don't file a return. 1994. We have attached a blank return to guide you in producing the necessary documents and records. Business address and telephone number of Internal Revenue Service officer named above. 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598. Place and time for appearance: At 185 Lennon Lane, Ste. 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 A.M.

Issued under the authority of the Internal Revenue Code this 9th day of February , 1996. Signed F. Aguilera, Revenue Officer.

EXHIBIT E

TITLES OF UNITED STATES CODE

*1. General Provisions.

2. The Congress

*3. The President.

*4. Flag and Seal, Seat of Government and the States.

*5. Government Organization and Employees; and Appendix.

+6. (Surety Bonds).

7. Agriculture.

8. Aliens and Nationality.

*9. Arbitration.

*10. Armed Forces; and Appendix.

*11. Bankruptcy; and Appendix.

12. Banks and Banking.

*13. Census.

*14. Coast Guard.

15. Commerce and Trade.

16. Conservation.

*17. Copyrights.

*18. Crimes and Criminal Procedure; and Appendix.

19. Customs Duties.

20.Education.

21. Food and Drugs.

22. Foreign Relations and Intercourse.

EXHIBIT E cont.

*23. Highways.

24. Hospitals and Asylums.

25. Indians.

26. Internal Revenue Code; and Appendix.

27. Intoxicating Liquors.

*28. Judiciary and Judicial Procedure; and Appendix.

29. Labor.

30. Mineral Lands and Mining.

*31. Money and Finance.

*32. National Guard.

33. Navigation and Navigable Waters.

34. (Navy).

*35. Patents.

36. Patriotic Societies and Observances.

*37. Pay and Allowances of the Uniformed Services.

*38. Veterans' Benefits; and Appendix.

*39. Postal; Service.

40. Public Buildings, Property, and Works; and Appendix.

41. Public Contracts.

42. The Public Health and Welfare.

43. Public Lands.

*44. Public Printing and Documents.

45. Railroads.

EXHIBIT E cont.

*46. Shipping: and Appendix.

47. Telegraphs, Telephones, and Radiotelegraphs.

48. Territories and Insular Possessions.

*49. Transportation.

50. War and National Defense; and Appendix.

---

*This title has been enacted as law. However, any appendix to this title has not been enacted as law.

+This title was enacted as law and has been repealed by the enactment of Title 31.

[This title has been eliminated by the enactment of Title 10.

Note: The lack of an asterisk (*) indicates title 26 has not been enacted into positive law.

(See Page III)

EXHIBIT E cont.

PREFACE 1994 EDITION

This twelfth edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 4, 1995. By statutory authority, this edition may be cited "U.S.C. 1994 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, 1982 and 1988.

Because many of the general and permanent laws that are required to be incorporated in the code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing, comprehensive project authorized by law to revise and codify, for enactment into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary, Titles 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 39, 44, 46, and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein contained. He matter contained in the other titles of the Code is prima facie evidence of the laws.

EXHIBIT E cont.

The title and chapter structure of the 1988 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1988.

This edition was prepared and published under the supervision of Edward F. Willett,Jr, Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior edition and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts and cooperation.

Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. January 4, 1995 (See Page vii)

EXHIBIT E cont.

PREFACE – 1988 EDITION

This eleventh edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 3, 1989. By statutory authority, this edition may be cited "U.S.C. 1988 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, and 1982.

Because many of the general and permanent laws that are required to be incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing, comprehensive project authorized by law to revise and codify, for enactment into positive law. each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1. 3, 4, 5, 9 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46. and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein contained. The matter contained in the other titles of the Code is prima facie evidence of the laws.

EXHIBIT E cont.

The title and chapter structure of the 1982 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1982.

This edition was prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts to make this edition as nearly perfect as possible.

Signed THOMAS FOLEY
Speaker of the House of Representatives

WASHINGTON, D.C. June 30, 1989
(see: page vii Preface Page United States Code)

EXHIBIT E cont.

PREFACE-1982 EDITION

This tenth edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 14. *1983*. By statutory authority, this edition may be cited "U.S.C. 1982 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952. 1958, 1964, 1970, and 1976.

Because many of the general and permanent laws that are required to be incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing. comprehensive project authorized by law to revise and codify, for enactment into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1. 3. 4. 5. 9, 10, 11, 13, 14, 17, 18, 23, 28. 31. 32, 35, 37, 38, 39, 44. and 49 have been revised, codified, and enacted into positive law and the text thereof Is legal evidence of the laws therein contained. The matter contained In the other titles of the Code Ls prima facie evidence of the laws.

The title and chapter structure of the 1978 edition, together with Supplement V

thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1976.

This edition was prepared and published under the supervision of Edward P. Willett, Jr., Law Revision Counsel of the House of Representatives. With the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts to make this edition as nearly perfect as possible.

Signed THOMAS P. O'NEILL

Speaker of the House of Representatives

Washington, D.C., January 14, 1983

EXHIBIT F

TITLE 1 SECTION 204

Codes and Supplements as evidence of the Laws of United States and District of Columbia; citation of Codes and Supplements

In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—

(a) United States Code. – The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

EXHIBIT F cont.

United States Code Titles As Positive Law

The following titles of the United States Code have been enacted into positive law by the acts enumerated below:

Title 1, General Provisions.

Title 3, The President.

Title 4, Flag and Seal, Seat od Government, and the States.

Title 5, Government Organization and Employees.

Title 6, Surety Bonds.

Title 9, Arbitration.

Title 10, Armed Forces.

Title 11, Bankruptcy.

Title 13, Census.

Title 14, Coast Guard.

Title 17, Copyrights.

Title 18, Crimes and Criminal Procedure.

Title 23, Highways.

Title 28, Judiciary and Judiciary Procedure.

Title 31, Money and Finance.

Title 32, National Guard.

Title 35, Patents.

Title 37, Pay and Allowances of the Uniformed Services.

EXHIBIT F cont.

Title 38, Veterans' Benefits.

Title 39, Postal Service.

Title 44, Public Printing and Documents.

Title 46, Shipping.

Title 49, Transportation.

NOTE: Title 26 is not listed.

EXHIBIT G

Title 31 USC Money and Finance

CHAPTER 3 – DEPARTMENT OF THE TREASURY

SUBCHAPTER 1 – ORGANIZATION

Sec.

301 Department of the Treasury

302 Treasury of the United States

303 Bureau of Engraving and Printing

304 Bureau of the Mint

305 Federal Financing Bank

306 Fiscal Service

307 Office of the Comptroller of the Currency

308 United States Customs Service

SUBCHAPTER 1 – ORGANIZATION

Sec. 301. Department of the Treasury

(a) The Department of the Treasury is an executive department of the United States Government at the Seat of Government.

(b) The head of the Department is the Secretary of the Treasury. The Secretary is appointed by the President, by and with the advice and consent of the Senate.

EXHIBIT G cont.

Title 5 – Government Organization and Employees

PART 1 – THE AGENCIES GENERALLY

Sections 101 to 552 appear in this Volume

Chapter	Section
1. Organization	101
3. Powers	301
5. Administration Procedure	501
6. The Analysis of Regulatory Functions	601
7. Judicial Review	701
9. Executive Reorganization	901

CHAPTER 3 – POWERS

Sec.

301 Departmental regulations

302 Delegation of authority

Section 301 Departmental regulations

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

EXHIBIT G cont.

Section 302. Delegation of authority

(a) For the purpose of this section, "agency" has the meaning given it by section 5721 of this title.

Section 5721. Definitions

For the purpose of this subchapter –

(1) "agency" means

(A) an Executive agency.

TITLE 4 – FLAG AND SEAL, SEAT OF GOVERNMENT

CHAPTER 3 – SEAT OF GOVERNMENT

Sec.
71 Permanent seat of Government

71 Public offices; at seat of Government

Section 71. Permanent seat of Government

All that part of the territory of the United States included within the present limits of the District of Columbia shall be the permanent seat of government of the United States.

Section 72. Public offices; at seat of Government

All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.

EXHIBIT G cont.

TITLE 5 – GOVERNMENT ORGANIZATION AND EMPLOYEES

PART 1 – THE AGENCIES GENERALLY

Sections 101 to 552 appear in this volume

Chapter		Section
1.	Organization	101
3.	Powers	301
5.	Administration Procedures	501

CHAPTER 1 – ORGANIZATION

Section
101. Executive departments.

102. Military departments.

103. Government corporation.

104. Executive agency.

Sections 101. Executive departments.

The Executive departments are:

The Department of State.

The Department of the Treasury.

Section 105. Executive agency

For the purpose of this title, "Executive agency" means an Executive department, a Government corporation, and an independent establishment.

EXHIBIT G cont.

TITLE 44 PUBLIC PRINTING AND DOCUMENTS

Section 1501. Definitions

"Federal agency" or "agency" means the President of the United States, or an executive department, independent board, establishment, bureau, agency, institution, commission, or separate office of the administrative branch of the Government of the United States but not the legislative or Judicial branches of the Government;

"person" means an individual, partnership, association, or corporation; and....

TITLE 26 – INTERNAL REVENUE CODE

Section 7801. Authority of Department of the Treasury

(a) Powers and duties of the Secretary

Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

Section 7805. Rules and Regulations

(a) Authorization

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of

any alteration of law in relation to internal revenue.

Section 7806. Construction of Title

(a) Cross references

The cross references in this title to other portions of the ttitle, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

(b) Arrangement and classification

No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C- 97- 2796 CW

ORDER SETTING CASE MANAGEMENT CONFERENCE

The above matter having been assigned to Judge Wilken,

IT IS HEREBY ORDERED, pursuant to Rule 16, Federal Rules of Civil Procedure, and Civil Local Rule 16, that a case management conference will be held before Judge Wilken, on Friday, 10/31/97 at 1:30 p.m., in Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, California.

Lead trial counsel shall meet and confer not less than thirty (30) days in advance of the conference and shall file a joint case management statement in the form contained in the Civil Local Rules (copy attached) not less than ten (10) days in advance of the conference.

If the conference is inconveniently scheduled, it may be-rescheduled by stipulation and order to another date or time convenient to the Court's calendar.

At the conclusion of the conference, an order will be entered setting dates either for a further case management conference, or for close of discovery, pretrial conference, and trial. Other orders regulating and controlling future proceedings may be entered.

Plaintiff *(s)* shall serve copies of this Order at once on all parties to this

action, and on any parties , subsequently joined, in accordance with Fed. R. Civ. P. 4 and 5. Following service, Plaintiff (s) shall file a certificate of service with the Clerk of this Court.

FAILURE TO COMPLY WITH THIS ORDER may be deemed sufficient grounds for dismissal of this cause, default or other appropriate sanctions. See Fed. R. Civ. P. 16 (f)

See attached for standard procedures.

IT IS SO ORDERED.

Signed CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

Raymond Bailey, Sherwood, SUI JURIS
1612 MERIAN DR7VE
PLEASANT HILL, CALIFORNIA REPUBLIC 94523
(510) 827-2604 IN PROPRIA PERSONA

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood
SOVEREIGN CITIZEN OF LAW

Case No. C-97-2796 CW

Plaintiff,

PLAINTIFF'S MOTION FOR JUDGMENT BY DEFAULT BY THE COURT

v.

Marilyn Hall Patel

Pursuant to F.R.C.P. 55(b)

Defendant.

_____/

MOTION

Comes now Raymond Bailey, Sherwood plaintiff in the above-entitled cause and respectfully moves the court to issue a **JUDGMENT BY DEFAULT BY THE COURT** against the defendant in this action for the reasons listed below.

STATEMENT

Whereas defendant failed to respond to the plaintiff's complaint in a timely manner, plaintiff now motions this court for default judgment.

FACTS

Plaintiff filed the complaint on July 30, 1997 and the complaint was duly served on August 1, 1997 allowing 60 days for response from August 2, 1997 until October 1, 1997.

The defendant failed to timely respond to plaintiff's complaint by the due date of October 1, 1997.

CLAIM FOR RELIEF

Wherefore, plaintiffs moves this court to make and enter a judgment in favor of plaintiff and against the defendant, awarding the relief sought of one million dollars, his cost of suit and expenses, including reasonable attorney's fees and such other and further relief to which he is justly entitled.

Dated: October 3, 1997

signed RAYMOND B. SHERWOOD

Honorable Claudia Wilken
United States District Judge
Courtroom 2, 4th Floor
1301 Clay Street
Oakland, California

Re: C-97-2796 CW

Dear Judge Wilken:

Enclosed with this letter is my (Plaintiff's) copy of the Joint Case Management Statement and Proposed Order to comply with your Order Setting Case Management Conference (copy enclosed). The Defendant has failed to respond to the Complaint which has prevented this party from issuing a JOINT Case Management Statement.

A copy of the plaintiff's Joint Case Management Statement, your Order Setting Case Management Conference, and this letter is being sent to the defendant.

Sincerely,_

Signed———————
Raymond B. Sherwood
1612 Merian Dr.
Pleasant Hill, Calif. 94523

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Raymond B. Sherwood, Plaintiff(s)

V.

Marilyn Hall Patel, Defendant'(s)

_____/

CASE NO. C-97-2796 CW

JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

The parties to the above – entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:

Ruling without jurisdiction.

2. The principal factual issues which the parties dispute:

Jurisdiction over plaintiff.

3. The principal legal issues which the parties dispute:

Lack of jurisdiction.

4. The other factual issues (e.g. service of process, personal jurisdiction, subject matter jurisdiction or venue) which remain unresolved for the reason stated below and how the parties propose to resolve those issues:

Lack of subject matter jurisdiction and personal jurisdiction.

5. The parties which have not been served and the reasons:

All parties served.

6. The additional parties which the below specified parties intend to join and the intended time frame for such joinder.

None anticipated

ALTERNATE DISPUTE RESOLUTION

7. The following parties consent to assignment of this case to a United States Magistrate Judge for (court or Jury) trial:

8. The parties have already been assigned (or the parties have agreed) to the following court ADR process (e.g. Nonbinding Arbitration, Early Neutral Evaluation, Mediation, Early Settlement with a Magistrate Judge) (State the expected or scheduled date for the ADR session):

9. The ADR process to which the parties jointly request (or a party separtely requests) referral:

DISCLOSURES

10. The parties certify that they have made the following disdlosures (list disclosures of persons, documents, damage, computations and insurance agreements): **None.**

11. The parties agree to the following discovery plan (Describe the plan e.g. any limitations on the number, duration or subject matter for various kinds of discovery: discovery from express: deadlines for completing discovery)

No agreement due to defendant's failure to respond to complaint.

TRIAL SCHEDULE

12. The parties request a trial date as follows:

Open court date.

13. The parties expect that the trial will last for the following number of days:

One day.

SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civil L.R. 16-12. Each of the undersigned certifies that he or she has read the brochure entitled "Dispute Resolution Procedures in the Northern District of California," discussed the available dispute resolution options provided by the court and private entities and has considered whether this case might benefit from any of the available dispute resolutions options.

Dated ; October 6, 1997 signed RAYMOND B. SHERWOOD

Dated : _____ signed _____

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the Case and the parties are ordered to comply with this Order. In addition the Court orders: (The Court may wish to make additional orders, such as:

a.
b. Referral of the parties to court or private ADR process;
c. Schedule a further Case Management Conference;
d. Schedule the time and content of supplemental disclosures;

d. Specially set motions;
e. Impose limitations on disclosure or discovery.
f. Set time for disclosure of identity, background and opinions of experts;
g. Set deadlines for completing fact and expert discovery;
h. Set time for parties to meet and confer regarding pretrial submissions.
i. ;Set deadline for hearing motions directed to the merits of the case.
j. Set deadline for submission of pretrial material
k. Set date and time foe pretrial conference.
l. Set a date and time for trial.

Dated:———

_____
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND B. SHERWOOD

Plaintiff,

v.

MARILYNHALL PATEL

Defendant.

_____/

No. C-97-2796 CW

ORDER CONTINUIING CASE MANAGEMENT CONFERENCE

On July 30, 1997, Plaintiff filed the above-captioned action.. A review of the file reflects that Plaintiff has failed to serve the summons and complaint in accordance with Rule 4(i) of the Rules of Civil Procedure. Accordingly,

IT IS HEREBY ORDERED that the Case Management Conference is continued to January 9, 1998, at 1:30 p.m. Plaintiff shall comply Rule 4(i) within the time limit for service as set forth in Rule 4(m). Failure to do so may result in dismissal of this action-

Dated: OCT 31 "

signed CLAUDIA WILKEN
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY SHERWOOD,

Plaintiff,

v.

MARILYN HALL PATEL,

Defendant.

/

No. C 97-02796 CW

ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

Plaintiff moves for judgment by default under Rule 55(b) of the Federal Rules of Civil Procedure. Defendant has filed no opposition. This matter will be decided on the papers that have been submitted. Having considered all of the papers filed by the parties, the Court denies the motion.

BACKGROUND

On July 30, 1997, Plaintiff Raymond Bailey Sherwood, proceeding pro se, filed a complaint against Hon. Marilyn Hall Patel, District Judge of the United States District Court for the Northern District of California. He alleges that Judge Patel acted outside the scope of her authority as a federal judge when she issued Supplemental order supporting an Order to Show Cause Re: Enforcement of Internal Revenue Service Summons. Mr. Sherwood alleges that the order, which was allegedly issued in want of personal and subject matter jurisdiction, forced Mr. Sherwood to appear before Revenue officer Francesca

Aguilera and disclose privileged personal information against his will. He alleges further that Judge Patel conducted a hearing on July 26, 1996, at which she acted with bias towards him.

Mr. Sherwood asserts three claims for relief against Judge Patel: violations of his constitutional rights, lack of subject matter jurisdiction, and abuse of legal process. He seeks one million dollars in damages. Judge Patel has not responded to the complaint.

On October 3, 1997, Mr. Sherwood filed a motion for entry of default under Rule 55(a) of the Federal Rules of Civil Procedure. That same day, he filed a separate motion for default judgment under Rule 55(b). Judge Patel has not responded to either motion.

DISCUSSION

I. Legal Standard

Three related concepts are involved in each case involving a default: default, entry of default, and default judgment. it is .important to distinguish between these concepts. As the Fifth Circuit pointed out in New York Life Ins, Co. v. Brown, 84 F.3d 137, 141 (5th Cir. 1996), a default occurs when a defendant has failed to respond to the complaint within the time required. An entry of default is what the clerk of the court enters when a plaintiff establishes the defendant's default by affidavit or otherwise. Id, After a defendant's default has been entered, the plaintiff may apply to the court or the clerk of the court for a default

judgment, which is a judgment based on the default. Id.

A defendant's default does not automatically entitle a plaintiff to a default judgment. Granting or denying a motion for default judgment is within the district court's sound discretion. Draper v. Coomba, 792 F.2d 915, 924 (9th Cir. 1986). A court may refuse to enter default judgment where the court determines no justifiable claim has been alleged, or the default judgment is otherwise inappropriate. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

II. Default judgment is inappropriate here

Default judgment is inappropriate here for three reasons.

First, according to the docket, although Mr. Sherwood has requested the entry of default, default has not been entered against Judge Patel. Under Rule 55 of the Federal Rules of Civil Procedure, a plaintiff must obtain an entry of default before applying for judgment based on such default. See New York Life-, 84 F.3d at 141.

Second, Rule 49(i) of the Federal Rules of Civil Procedure provides that, in order to effect service upon an officer of the United States, a plaintiff must do three things: (1) deliver a copy of the summons and the complaint to the United States Attorney for the district in which the action is brought; (2) send a copy of the summons and the complaint to the Attorney General of the

United States; and (3) send a copy of the summons and complaint to the officer of the United States. Because Mr. Sherwood has failed to serve the United States Attorney or the Attorney General, he has failed to effect proper service upon Defendant. By Order of October 31, 1997, the Court continued the Case Management Conference in this case to January 9, 1998 because Mr. Sherwood had failed to serve the summons and complaint in accordance with Rule 4(i) of the Federal Rules of Civil Procedure.

Third, even if Mr. Sherwood were to obtain an entry of default against Judge Patel, default judgment would be inappropriate because she is protected by absolute judicial immunity. In New Alaska Development Corp. v. Guetschow, 869 F.2d 1298 (9th Cir. 1989), the Ninth Circuit held that absolute judicial immunity protects a judge functioning in a judicial capacity. In Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996) , cert, denied, 117 S. Ct. 963 (1997), the Ninth Circuit held that a judge enjoys absolute judicial immunity from civil actions for damages as well as actions for declaratory, injunctive and other equitable relief. Absolute judicial immunity applies even if the plaintiff alleges that the judge committed legal errors. The Moore court held further that judicial immunity applies, however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff. at 1244 (quoting Cleavinger v. Saxner, 474 U.S. 193, 199-200

(1985). Even grave procedural errors or acts in excess of judicial authority do not deprive a judge of absolute judicial immunity. Id. A judge loses absolute immunity only when he or she acts in the clear absence of all jurisdiction or performs an act that is not judicial in nature. Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir.), cert. denied, 488 U.S., 995 (1988).

Here, Judge Patel is entitled to absolute judicial immunity. Her acts of issuing the order to show cause regarding the enforcement of the IRS summons and conducting the hearing regarding this summons qualify as judicial acts well within her jurisdiction. Title 26 U.S.C. § 7402(b) provides the United States district courts with subject matter jurisdiction over the enforcement of a summons under internal revenue laws. Furthermore, the district court had personal jurisdiction over Mr. Sherwood because of his residence in the Northern District of California. Rule 4(k)(1)(A) Fed. R. Civ. Proc. Mr. Sherwood's assertions to the contrary are without merit.

Under Schucker and Moore, therefore, Judge Patel is immune from Mr. Sherwood's civil suit for damages based on these judicial actions.

Because Mr. Sherwood has failed to state a justifiable claim against Judge Patel, the Court denies his motion for default judgment. See Eitel, 782 F.2d at 1471-72 (9th Cir. 1986).

CONCLUSION

For the foregoing reasons, Plaintiff's motion is denied.

Dated::Nov 03 1997

signed CLAUDIA WILKEN
United States District Judge

Raymond Bailey, Sherwood, SUI JURIS
1612 Merian Dr.
Pleasant Hill, California 94523
(510) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood a proper and necessary Party Plaintiff, v. Marilyn Hall Patel, in Her private person Defendant. ———————————/	File Number. C-97-02796 CW PLAINTIFF'S MOTION TO VACATE ORDER CONTINUING CASE MANAGEMENT CONFERENCE Date: December 12, 1997 Time: 10:30 a.m.

MOTION

Comes now Raymond Bailey Sherwood, plaintiff in the above entitled cause and respectfully moves the court to VACATE ORDER CONTINUING CASE MANAGEMENT CONFERENCE for the reasons listed below.

STATEMENT

Plaintiff filed the above-captioned action on July 30, 1997and served the defendant on August 1, 1997 as an "individual-defendant" under Rule 4(e) (2) of the Federal Rules of Civil Procedure. The defendant has failed to respond to the complaint.

DISCUSSION

I

WAS SERVICE PROPER

Service was proper under Rule 4 (e) (2).). Rule 4(e) Service Upon Individuals Within a Judicial District of the United States. (2)...or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process.

The Complaint is quite clear as being against Marilyn Hall Patel, as an individual. The Proof of Service on line 4a indicates "as an individual descendant" and also indicates -t.hat Lorlig Muriyama was authorized to accept service for Marilyn Hall Patel, which indicates Service was proper under Rule 4(e) (2).

Service was timely as recognized by the filing of the Complaint on July 30, 1997 and Service completed on August 1, 1997 as authenticated by the Proof of Service.

Service under Rule 4(i) is NOT APPLICABLE. Rule 4(i) Service Upon the United States, and Its Agencies, Corporations, or Officers. The United States, and Its Agencies, Corporations, or Officers are not a party in this action, therefore Service under Rule 4 (i) is not applicable.

II

PLAINTIFF'S OBJECTIONS

Plaintiff OBJECTS to this Court acting as an Attorney from the Bench. It is the responsibility of the defendant to raise any issues of dispute with the Complaint or with Service of the Summons and any action on behalf of the defendant is an abuse of discretion by the Court, particularly in view of the absence or a responsive pleading by the defendant.

CONCLUSION

Plaintiff has properly served the defendant in this action and within the allotted time period. The fact that the defendant has failed to supply any factual basis for a meritorious defense either by motion or affidavit, leaves the Court no ethical or legal alternative but to presume the plaintiff's allegations are true.

> Where the complaint is verified, and the defendant fails to answer, plaintiff is entitled to judgment on the complaint, witriout proof of the facts. *Tuolumne Redemption Co. v. Patterson, 18 Cal 415; Lick* v Stockdale, 18 Cal 219.
>
> Defendant's default in failing to answer complaint was willful indifference to court's authority, permitting district court to refuse to set aside entry of default on good cause grounds; there was no evidence demonstrating that defendant did not have actual knowledge of the complaint, summons provided that failure to answer within 20 days would result in an entry of a default judgment, and defendant never filed an answer or otherwise pled to complaint: Hunt *v. Kling Motor Co., D.C.-. Kan. 1994, 841 F. Supp. 1098.*
>
> Although law generally favors hearing on merits, plaintiff as entitled to default— judgment when defendant fails to answer, demur, or give

notice of certain other motions. *Ely v. Gray (1990) .224 Cal. App. 3rd 1257, 1260, 274 Cal , Rptr. 536.*

Relief from a default judgment must be sought under Rule 60(b) and there is no evidence that defendant requested such relief.

Respectfully submitted on November 12, 1997

Signed RAYMOND B. SHERWOOD

1612 Merian Dr.
Pleasant Hill. Calif. 94523

A-21 cont.

(1)

Supreme Court, U.S.
FILED

99 8 46 MAR 1 - 1999

No.

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October 1998 Term

Raymond B. Sherwood

Petitioner,

v.

Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDEX III

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

10 cy

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October 1998 Term

Raymond B. Sherwood

Petitioner,

v.

Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDEX III

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

Raymond Bailey, Sherwood, SUI JURT-S
1612 MERIAN DR.
PLEASANT HILL, CALIFORNIA 94523
(510) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood a proper and necessary Party Plaintiff, v.. Marilyn Hall Patel in her private person Defendant, _____/	No. C 97-02796 CW PLAINTIFF'S MOTION TO VACATE ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT Date: December 12, 1997 Time: 10:30 a.m.

MOTION

Comes now Raymond Bailey Sherwood, plaintiff in the above entitled cause and respectfully moves the court to **VACATE ORDER DENYING PLAINTIFF'S MOTION FOR DEFAUT JUDGMENT** for the reasons listed **below.**

STATEMENT

Plaintiff filed a complaint on July 30, 1997, against Marilyn Hall Patel, as an individual, who operated outside the scope of her authority as a federal judge because she lacked personal and subject matter jurisdiction. The defendant failed to timely respond to the complaint and plaintiff filed a Motion For Default Judgment on October 3, 1997 and served the defendant the Notice of Motion for Default Judgment and the Motion for Default

Judgment along with the Plaintiff's Declaration in Support of Motion and the defendant failed to supply any factual basis for a meritorious defense either by motion or affidavit.

DISCUSSION

I

SERVICE WAS PROPER

Service of the complaint and summons was proper under Rule 4(e)(2) of the Federal Rules of Civil Procedure for service upon Individuals Within a Judicial District of the United States. The defendant was notified of the motion for Default Entry and the motion for Default Judgment along with the plaintiff's Declaration in Support of the Default on October 3, 1997 as evidenced by the Proof of Service filed with the court on October 3, 1997 and this fact is recognized on page 2, lines 13 to 16, of the court's ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT, along with the fact that the defendant failed to respond to either the Motion for Entry or the Motion for Default Judgment.

PLAINTIFF OBJECTS

The plaintiff recognizes; 'that a defendant's default does not automatically entitle a plaintiff to a default judgment however the defendant must raise the issues of contention because it is an Abuse of Process for the court to act as an Attorney from the Bench in support of the defendant.

Re: ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

page 1, lines 16-20 the court states, "Defendant has filed no opposition. This matter will be decided on the papers that have been submitted. Having considered all of the papers filed by the parties, the Court denies the motion." If this matter is decided on the papers that have been submitted and the defendant has filed no papers and the plaintiff's papers support the default judgment the court is obligated to grant the Default Judgment.

> Defendant's default in failing to answer complaint was willful indifference to court's authority, permitting district court to refuse to set aside entry of default on good cause grounds; there was no evidence demonstrating that defendant did not have actual knowledge of the complaint, summons provided that failure to answer within 20 days would result in an entry of a default judgment, and defendant never filed an answer or otherwise pled to plaintiff's complaint. *Hunt v. Kling Motor Co., D.C. Kan. 1994, 841 F. Supp. 1098.*
>
> Where the complaint is verified, and the defendant fails to answer, plaintiff is entitled to judgment on the complaint, without proof of the facts. *Tuolumne Redemption Co. v. Patterson,18 Cal 415; Lick v Stockdale, 18 Cal 219.*
>
> Although law generally favors hearing on merits, plaintiff is entitled to default judgment when defendant fails to answer, demur, or give notice of certain other motions. *Ely v Gray (1990) 224 Cal. App. 3d 1257, 1260, 274 Cal. Rptr. 536.*

Relief from a default judgment must be sought under Rule 60(b) and there is no evidence that defendant requested such relief.

On page 1 lines 19-20 the court has referenced papers filed by "the parties", yet there is no evidence of any papers being filed except by one party, the plaintiff, and the courts decision seems to be based on a conflicting

statement. In fact, the entire ORDER is a conglomeration of statements and arguments that are absent of a response from the defendant which means that the defendant's position is being argued or presented as an attorney from the bench.

III

DEFENDANT HAD NO JURISDICTION

Plaintiff objects to court's citing that a "judge" has absolute judicial immunity when acting and ruling outside of the law and outside of the scope of their office. Such action would be sedition, treason and certainly anarchy.

At page 4 lines 22-26 the court properly recognized what are causes of action in this complaint, wherein the defendant acts in the clear absence of all jurisdiction or performs an act that is not judicial in nature. The complaint clearly proved that defendant recklessly acted and ruled contrary to issues of law contained in the general and permanent laws of the United States Codes and such law is not subject to challenge by court or jury. On page 5 line 4-6 the courts reference by cite of Title 26 U.S.C. § 7402(b) as legal evidence of law or having subject matter jurisdiction is sophistry. A statute is not self executing but must have a complaint to establish jurisdiction and this issue is the very subject of the complaint to which the court failed to acknowledge or take judicial notice.

The court erred in claiming a secondary issue of personal jurisdiction by geographic location. Due process guarantees that personal jurisdiction can only be gained after subject matter jurisdiction is obtained and documented. There is

no subject matter jurisdiction without a summons and complaint under Rule 4(a) of the Federal Rules of Civil Procedure.

The rule that governs the summons governs the whole topic of jurisdiction of the person, which is the principle of civil procedure. Rule 4 regulates personal jurisdiction single-handedly and subdivision (a) governs the issuance of the summons, which the clerk issues in federal practice. The transcript shows that "Judge" Patel "admitted" there was no complaint, therefore she could have NO jurisdiction!

The ultimate source of subject matter jurisdiction is the Constitution itself, where Article 3, § 2, lists its outer limits as follows:

ARTICLE III

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States,...

It takes an Act of Congress (a statute) to actually confer the jurisdiction on a district court, and the presence of subject matter jurisdiction, usually with a citation of the jurisdiction conferring statute, must be demonstrated by the plaintiff (Patel) in every case. There must be a "process" by any paper whereby a person is subjected to a courts jurisdiction or otherwise made to comply with its demands. There was no citation of a jurisdiction statute. Furthermore, the California Rules of Court (Federal) 1997 Revised Edition clearly confirms this requirement in: **3-5. Jurisdictional Statement.**

(a) **Jurisdiction.** Each **complaint,** petition., counterclaim and cross

claim shall include a separate paragraph entitled "Jurisdiction". The paragraph will identify the statutory or other basis for federal jurisdiction and the facts supporting such jurisdiction and the facts supporting such jurisdiction.

In this matter the "Patel" court failed miserably and acted outside of the law and perpetuated the litigation against the defendant in her individual capacity for action outside the oath and duties mandated by the United States Constitution at ARTICLE VI., Clause 2.: to wit: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land: and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding (Emphasis added).

IV

NO DUE PROCESS

The plaintiff's Motion for Default Judgment was duly filed and scheduled for a Hearing on November 7, 1997 but the court, without Notice, issued a decision on November 3, 1997 and thusly denied the plaintiff the opportunity to examine evidence and present oral testimony which is a denial of due process.

"The fair hearing essential to meet minimum requirements of due process includes not only rudimentary fairness in conduct of hearing when and where held, but also reasonable fair opportunity to be present at time and place fixed to cross-examine any opposing witnesses, to offer evidence, and to be heard at Least briefly in defense." *Jeffries v. Olesen, D.C. Cal 1954,* 121 F *Supp. 462.*

CONCLUSION

Plaintiff has no argument that a judge has judicial immunity when the judge has jurisdiction, but in this case the defendant has failed the jurisdiction requirements.

A judge loses absolute immunity only when he or she acts in the clear absence of all jurisdiction ... Schucker v. Rockwood, 846 F. 2d 1202, 1204, 9th Cir. *See Forrester* v. *White*,– U.S.–, 108 S. Ct. 538, 544-46, 398 L. Ed.2d 555 (1988); *Stump*, 435 U.S. at 356-57 & n. 7, 98 S.Ct. at 1105 & n. 7; *Ashelman*, 793 F.2d at 1075 .

Defendant has not claimed immunity when she has failed to respond to the complaint and make such a claim.

Respectfully submitted on November 12, 1997.

Signed: Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, California 94523

U.S. Department of Justice
United States Attorney
Northern District of California
Federal Building
1301 Clay Street, Suite 340S
Oakland, California 94612-5217

November 24, 1997

Mr. Raymond B. Sherwood
1612 Merian Dr.
Pleasant Hill, CA 94523

Re: Sherwood v. The Honorable Marilyn Hall Patel

Civil Action No. C-97-2796-CW

Dear Mr. Sherwood:

We have received a copy of the Summons and Complaint in this action. However, you have not properly served the United States or its agencies or officers.

Please note that Rule 4 (i), Federal Rules of Civil Procedures, as amended, effective December 1, 1993, requires the following:

(I) Service Upon the United States, and Its Agencies, Corporations, or Officers.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States Attorney for the district in which the action is brought or to an Assistant United States Attorney or clerical employee

designated by the United States Attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the Office of the United States Attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) Service upon an officer, agency or corporation of the United States shall be effected by serving the United States in the manner prescribed by paragraph (1) of the subdivision and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency, or corporation.

(3) The court shall allow a reasonable time for service of process under this subdivision for the purpose of curing the failure to serve multiple officers, agencies, or corporations of the United States if the plaintiff has effected service on either the United States Attorney or the Attorney General of the United States.

If you have any questions regarding this matter, please feel free to call me.

Very truly yours,

MICHAEL J. YAMAGUCHI
United States Attorney

Signed: SUSAN L. KAMLET
Assistant United States Attorney

SLK/er

cc:The Honorable Claudia Wilken United States District Judge

U.S. Department of Justice
Torts Branch

Federal Programs Branch
U.S. Department of Justice10th & Constitution Aves., N.W.
Washington, D.C. 20530

Administrative Office of U.S. Courts
General Counsel
811 Vermont Avenue, N.W., Room 641
Washington, D.C. 20544

December 8, 1997

Susan L Kamlet
Asst. U.S. Attorney
U.S. Dept. of Justice
Federal Building
1301 Clay Street. Suite –340S
Oakland. Calif. 94612-5217

Re: Sherwood v. Patel C 97-2796 CW

Dear Mz. Kamlet:

Thank you for your letter of information dated November 24, 1997 (copy attached)

Please note that I do agree –with your interpretation of Rule 4(I) of the Federal Rules of Civil Procedure, as they apply to service upon the United States, its Agencies, Corporations, or Officers. However, my Complaint is against Marilyn Hall Patel in her private person, as clearly indicated on the Title page of the Complaint (copy attached) and on the Proof of Service (copy attached, see 4a) as an individual defendant, and as such I believe service was proper.

The defendant, Marilyn Hall Patel, as a private person has failed to respond to this complaint which raises the question of your involvement in these issues, are you representing the private person, Marilyn Hall Patel?

It appears that you and Judge Wilken are attempting to influence me to involve the United States in this action but I do not believe the U.S. should be

a party to an action involving an individual operating outside the scope of her office, however, I will comply with your request and forward a copy of the Summons and Complaint to United States Attorney Michael J. Yamaguchi and United States Attorney Janet Reno, keeping in mind that the Complaint is against Marilyn Hall Patel as a private person.

Thank you for your suggestion and consideration.

Sincerely,

signed RAYMOND B. SHERWOOD
1612 Merian Dr.
Pleasant Hill, Calif. 94523

cc: Judge C. Wilken
Federal Programs Branchj
General Counsel, Administrative Office of U.S. Courts
Congressmen Lott, Archer, Gramm, Gingrich, Lugar, and Crane.

Raymond Bailey, Sherwood, SUI JURIS
1612 MERIAN DR.
PLEASANT HILL, CALIF. 94523
(510) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood
a proper and necessary
Party

Plaintiff,

v.

Marilyn Hall Patel in
Her private person

Defendant

_____/

File Number. C 97-02796 CW

PLAINTIFF'S MOTION FOR
LEAVE TO FILE A MOTION
FOR RECONSIDERATION

Date: January 16, 1998
Time: 10:30 a.m.

MOTION

Comes now Raymond Bailey Sherwood, plaintiff in the above-entitled cause and respectfully moves the court to GRANT A MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION for the reason of manifest failure by the court to consider material facts which were presented to the court before such interlocutory order. listed below.

Plaintiff OBJECTS to this court considering ANY information contrary to plaintiff's position, when defendant has failed to respond to the complaint. Such action indicates the court acted with bias and prejudice against the plaintiff and is acting as an attorney from the bench in violation of Title 28 Sec. 454.

Any assertion of plaintiff's claims for relief must be upheld by the court

unless those claims are denied or challenged by "the defendant" an offer of defense by the court is evidence the court is acting as an attorney from the bench.

The court's rulings on Default, Service of the Complaint and judicial immunity are all issues that are required to be raised by the defendant and the court's arguments are points that could be raised by the defendant but to present such arguments from the bench is clearly a violation of Title 28 Sec. 454.

> Title 28 Sec. 454. Practice of law by justices and judges.
> Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.

STATEMENT

Plaintiff filed a complaint on July 30, 1997, against Marilyn Hall Patel, as an individual private person, who operated outside the scope of her authority as a federal judge because she lacked personal and subject matter jurisdiction. Defendant was served the complaint on August 1, 1997 and it has been 120 days to this date that the defendant has failed to supply any factual basis for a meritorious defense either by motion or affidavit.

Federal Rules of Civil Procedure 8(c) state that a defendant must plead "any matter constituting an avoidance or affirmative defense." and the summons informs the defendant "an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against

you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DISCUSSION

In exercising its discretion in determining whether to grant a default judgment, the district court may properly consider such factors as: (1) whether the defendant's failure to plead or otherwise defend is largely technical; (2) whether the plaintiff will be prejudiced if the default judgment is not entered, and if so, to what extent; and (3) whether entry of the default judgment would result in injustice. The policy reasons for allowing default judgments were expressed by the D.C. Federal Court in H.F. Livermore Corporation v. Aktiengesellschaft Gebruder Loepfe, 432 F.2d 689 (D.C. 1970), where the Court stated:

> (A] Default judgment must normally be viewed as available only when the adversary process has been halted because of an essentially unresponsive party. In this instance, the diligent party must be protected lest he be faced with interminable delay and continued uncertainty as to his rights.

CONCLUSION

Defendant, Marilyn Hall Patel, a Private person, has failed to plead or answer the complaint which was filed July 30, 1997 and served upon the defendant August 1, 1997. Marilyn Hall Patel is in DEFAULT in the absence of a responsive pleading.

Therefore Plaintiff requests this court for leave to file a Motion for Reconsideration.

Respectfully submitted this 11th day of December 1997

signed: Raymond B. Sherwood

A-25 cont.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWOOD,

Plaintiff,

v.

MARILYN HALL PATEL
vi.
Defendant.

/

No. C 97-2796 CW

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION

On December 11, 1997, Plaintiff filed a motion for leave to file a motion for reconsideration. Having considered Plaintiff's motion, and good cause not appearing,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to file a motion for reconsideration is DENIED. The hearing set for January 16, 1998, is vacated.

Dated: Dec 18 1997

signed: CLAUDIA WILKEN

United States District Judge.

IN THE UNITED STATES DISTRICT COURT-

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWCOD

Plaintiff

No. C 97-02796 CW

V.

MARILYN HALL PATEL, Judge

ORDER OF DISMISSAL

Defendant.

_____/

On October 31, 1997, the Court issued an Order Continuing Case Management Conference wherein the Case Management Conference, previously set for October 31, 1997, was continued to January 9, 1998, at 1:30 p.m. On January 9, 1998, a Case Management Conference was held. Sue Kamlet, Assistant U. S. Attorney, specially appeared on behalf of the Defendant. No appearance was made by or on behalf of the Plaintiff. Accordingly,

IT IS HEREBY ORDERED that the above-captioned action is DISMISSED for failure to prosecute.

Dated: Jan 13 1998

signed: CLAUDIA WILKEN

United States District Judge

Raymond Bailey, Sherwood, SUI JURIS
1612 MERIAN DR.
PLEASANT HILL, CALIFORNIA 94523
(510) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE—

NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood
a proper and necessary
Party

Plaintiff,

v.

Marilyn Hall Patel in
Her private person

Defendant.
_____/

File Number. C 97-2796 CW

PLAINTIFF'S OBJECTION TO
COURT'S ORDER OF DISMISSAL

On January 13, 1998, United States District Judge Claudia Wilken issued an ORDER OF DISMISSAL (copy attached) for failure to prosecute, to which the plaintiff objects for the following reasons:

DEFENDANT IS IN DEFAULT

The defendant, Marilyn Hall Patel, has failed to respond to the plaintiff's Complaint and is currently in DEFAULT.

PLAINTIFF HAS ATTEMPTED TO PROSECUTE

Plaintiff filed a MOTION FOR JUDGMENT BY DEFAULT BY THE COURT on October 3, 1997, which the Court denied on November 3, 1997.

Plaintiff filed a MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION on December 11, 1997, which was denied by the Court on

December 18, 1997.

CASE MANAGEMENT CONFERENCE RESCHEDULED

Because the defendant failed to respond to the plaintiff's Complaint, the Case Management Conference originally scheduled for October 31, 1997 was RESCHEDULED by the Court to January 9, 1999, and again RESCHEDULED to January 16, 1998.

Plaintiff filed a MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION on December 11, 1997, and on December 12, 1997 Plaintiff received a telephone message from the Court advising that the Case Management Conference scheduled for January 9, 1998 would be held along with the MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION.

HEARING VACATED

Plaintiff received a Court Order (copy attached) filed December 18, 1997 denying plaintiff's Motion for Leave and vacating the hearing set for January 16, 1998.

ORDER OF DISMISSAL

On January 20, 1998 plaintiff received an ORDER OF DISMISSAL (copy attached) for failure to prosecute based upon plaintiff's failure to appear at the (vacated] Case Management Conference.

DEFENDANT IS WITHOUT REPRESENTATION

There is no record of notification that Assistant U. S. Attorney Sue Kamlet is representing the defendant in this matter, although, plaintiff did

receive a letter from Assistant U.S. Attorney Susan L. Kamlet, dated November 24, 1997 (copy attached) where she advises the plaintiff on service of Summons and Complaint but she fails to state her involvement with the issues.

Plaintiff sent a letter to Assistant U.S. Attorney Kamlet dated December 8, 1997 (copy attached) and questioned her involvement in these issues. Assistant U.S. Attorney Kamlet has failed to respond to this letter, or make any indication that she is representing the defendant.

DENIAL OF DUE PROCESS

The ORDER OF DISMISSAL is a denial of due process, a miscarriage of justice, and an abuse of legal process. Based upon the above cited reasons, the plaintiff respectfully request the Court to set aside the Order Of Dismissal and hear this case on its merits.

signed: Raymond Bailey Sherwood

Dated: January 26, 1998

IN THE UNITED STATES DISTRICT COURT-

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWCOD

Plaintiff

No. C 97-02796 CW

V.

MARILYN HALL PATEL, Judge

ORDER OF DISMISSAL

Defendant.

_____/

On October 31, 1997, the Court issued an Order Continuing Case Management Conference wherein the Case Management Conference, previously set for October 31, 1997, was continued to January 9, 1998, at 1:30 p.m. On January 9, 1998, a Case Management Conference was held. Sue Kamlet, Assistant U. S. Attorney, specially appeared on behalf of the Defendant. No appearance was made by or on behalf of the Plaintiff. Accordingly,

IT IS HEREBY ORDERED that the above-captioned action is DISMISSED for failure to prosecute.

Dated: Jan 13 1998

signed: CLAUDIA WILKEN

United States District Judge

A-28 cont.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWOOD,

Plaintiff,

vii.

MARILYN HALL PATEL
viii.
Defendant.

/

No. C 97-2796 CW

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION

On December 11, 1997, Plaintiff filed a motion for leave to file a motion for reconsideration. Having considered Plaintiff's motion, and good cause not appearing,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to file a motion for reconsideration is DENIED. The hearing set for January 16, 1998, is vacated.

Dated: Dec 18 1997

signed: CLAUDIA WILKEN

United States District Judge.

U.S. Department of Justice
United States Attorney
Northern District of California
Federal Building
1301 Clay Street, Suite 340S
Oakland, California 94612-5217

November 24, 1997

Mr. Raymond B. Sherwood
1612 Merian Dr.
Pleasant Hill, CA 94523

Re: Sherwood v. The Honorable Marilyn Hall Patel

Civil Action No. C-97-2796-CW

Dear Mr. Sherwood:

We have received a copy of the Summons and Complaint in this action. However, you have not properly served the United States or its agencies or officers.

Please note that Rule 4 (i), Federal Rules of Civil Procedures, as amended, effective December 1, 1993, requires the following:

(I) Service Upon the United States, and Its Agencies, Corporations, or Officers.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States Attorney for the district in which the action is brought or to an Assistant United States Attorney or clerical employee

A-28 cont.

designated by the United States Attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the Office of the United States Attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) Service upon an officer, agency or corporation of the United States shall be effected by serving the United States in the manner prescribed by paragraph (1) of the subdivision and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency, or corporation.

(3) The court shall allow a reasonable time for service of process under this subdivision for the purpose of curing the failure to serve multiple officers, agencies, or corporations of the United States if the plaintiff has effected service on either the United States Attorney or the Attorney General of the United States.

If you have any questions regarding this matter, please feel free to call me.

Very truly yours,

MICHAEL J. YAMAGUCHI
United States Attorney

Signed: SUSAN L. KAMLET
Assistant United States Attorney

SLK/er

cc:The Honorable Claudia Wilken United States District Judge

- U.S. Department of Justice
  Torts Branch

  Federal Programs Branch
  U.S. Department of Justice10th & Constitution Aves., N.W.
  Washington, D.C. 20530

  Administrative Office of U.S. Courts
  General Counsel
  811 Vermont Avenue, N.W., Room 641
  Washington, D.C. 20544

December 8, 1997

Susan L Kamlet
Asst. U.S. Attorney
U.S. Dept. of Justice
Federal Building
1301 Clay Street. Suite –340S
Oakland. Calif. 94612-5217

Re: Sherwood v. Patel C 97-2796 CW

Dear Mz. Kamlet:

Thank you for your letter of information dated November 24, 1997 (copy attached)

Please note that I do agree –with your interpretation of Rule 4(I) of the Federal Rules of Civil Procedure, as they apply to service upon the United States, its Agencies, Corporations, or Officers. However, my Complaint is against Marilyn Hall Patel in her private person, as clearly indicated on the Title page of the Complaint (copy attached) and on the Proof of Service (copy attached, see 4a) as an individual defendant, and as such I believe service was proper.

The defendant, Marilyn Hall Patel, as a private person has failed to respond to this complaint which raises the question of your involvement in these issues, are you representing the private person, Marilyn Hall Patel?

It appears that you and Judge Wilken are attempting to influence me to involve the United States in this action but I do not believe the U.S. should be

a party to an action involving an individual operating outside the scope of her office, however, I will comply with your request and forward a copy of the Summons and Complaint to United States Attorney Michael J. Yamaguchi and United States Attorney Janet Reno, keeping in mind that the Complaint is against Marilyn Hall Patel as a private person.

Thank you for your suggestion and consideration.

Sincerely,

signed RAYMOND B. SHERWOOD
1612 Merian Dr.
Pleasant Hill, Calif. 94523

cc: Judge C. Wilken
Federal Programs Branchj
General Counsel, Administrative Office of U.S. Courts
Congressmen Lott, Archer, Gramm, Gingrich, Lugar, and Crane.

IN THE UNITED STATES DISTRIC

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY SHERWOOD,

Plaintiff,

MARILYN HALL PATEL,

Defendant.

/

No. C 97-02796 CW

ORDER REAFFIRMING DISMISSAL OF CASE

Plaintiff objects to the Court's Order of Dismissal entered on January 18, 1998 and requests that it be set aside. In that Order the Court dismissed this case for failure to prosecute when Plaintiff failed to attend the Case Management Conference held on January 9, 1998. Plaintiff states that he did not attend the January 9 Case Management Conference because he had received a telephone message from the Court advising him that it had been rescheduled to January 16, 1998. Plaintiff states that he subsequently received written notice from the Court vacating the Case Management Conference scheduled for January 16.

Plaintiff is incorrect. However, even if he were correct, this case was properly dismissed. As explained in the Court's Order Denying Plaintiff's Motion for Default Judgment, Defendant Judge Marilyn Hall Patel is protected from lawsuits by absolute judicial immunity. Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996), cert. denied, 117 S. Ct. 963 (1997). Judicial immunity applies

even when the judge acts erroneously, or in excess of judicial authority or the act is injurious to the plaintiff. Id. at 1244.

Plaintiff continues to contend that he is suing Judge Patel in her individual capacity, not in her official capacity as a judge. However, as explained in the Order Denying Plaintiff's Motion for Default Judgment, Judge Patel was acting in her official capacity as a judge when she issued the order to show cause which is the subject of Plaintiff's complaint. Judge Patel is immune from Plaintiff's civil suit for damages because it is based upon her judicial actions.

Because Plaintiff has failed to state a justiciable claim against Judge Patel, this case was properly dismissed.

CONCLUSION

For the foregoing reasons, the Court overrules Plaintiff's objection to the Court's Order of Dismissal and reaffirms dismissal of this case. The clerk shall close the file and no more filings shall be received in this closed docket.

IT IS SO ORDERED.

Dated: MAR 10 1998 signed: CLAUDIA WILKEN

United States District Judge

Raymond Bailey, Sherwood, SUI J-URIS
1612 MERIAN DRIVE
PLEASANT HILL, CALIFORNIA REPUBLIC 94523
(510) 827-2604
IN PROPRIA PERSONA

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood
a proper and necessary
party
Plaintiff,

v.

Marilyn Hall Patel
In her private person
Defendant.
_____/

Case No.:C 97-2796 CW

NOTICE OF APPEAL

Notice is hereby given that Notice is hereby given that Raymond Bailey, Sherwood appeals to the United States Court of Appeals for the Ninth Circuit from the: ORDER REAFFIRMING DISISSAL OF CASE entered in this action on March 13, 1998.

Signed: Raymond B. Sherwood

Dated: March 20, 1998

1612 Merian Dr.
Pleasant Hill, Calif. 94523
Phone (510) 827-2604

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Raymond Bailey Sherwood
Appellant / Petitioner
Vs.
Marilyn Hall Patel
Appellee / Respondent

CASE NO. 98-15496

APPELLANT'S OR PETITIONER'S INFORMAL BRIEF

1. Jurisdiction

a. Timeliness of Appeal or Petition:

(I) Date of entry of judgment or order

of order of district court: March 13, 1998

(ii) Date of service of any motion made after

judgment (other than for fees and costs) :

(iii) Date of entry of order deciding motion

(iv) Date notice of appeal or petition filed March 20, 1998

(v) For prisoners, date you gave notice of appeal to

prison authorities

b. PLEASE ATTACH ONE COPY OF EACH OF THE FOLLOWING:

1. The order from which you are appealing

2. The district court's entry of judgment

3. The district court's docket sheet

2. *What are the facts of your case*

Appellant filed Complaint No. C 97-2796 CW on July 30, 1997, against Marilyn Hall Patel (appellee) citing abuse of legal process; ruling with want of jurisdiction and for violation of Constitutional due process of law. Appellee failed to answer the Complaint or respond in any manner but chose to rely on the court of Judge Claudia Wilken to dispose of the Complaint. The record will show that the only response to the Complaint was by Judge Wilken who acted as an Attorney from the Bench in defending Appellee, but also defended Appellee by disposing of Appellant's issues and motions with rulings of denial.

Lack of subject matter and personal jurisdiction Appellee Patel frivolously claimed jurisdiction under IRC 26 U.S.C. as shown in the transcripts of the hearing to wit: This proceeding is brought and this court has jurisdiction hereof under Sections 7402(b) and 7604(a) of the Internal Revenue Code (26 U.S.C. 5§ 7402 and 7604). This jurisdictional claim fails for six reasons cited below.

1. Appellee's jurisdictional claim fails by the fact that federal legislation is prohibited in the individual states except in the specific geographic areas purchased from the States, pursuant to Article I, Section 8, and Clause 17 and sustained by the 9th and 10th Amendments to the United States Constitution. These facts are also maintained by California Government Code Section 110 and 111, and none of plaintiff's person or property is within such designated federal enclave.

2. Appellee's jurisdictional claim further fails by the fact that Title 26 U.S.C., the Internal Revenue Code, is merely "prima facie" law that has never been enacted into positive law as cited in Title 1 U.S.C. Section 204(a) and identified in Sec. 204 et seq. *"United States Code Titles As Positive Law."* If construction of section of United States Code which has not been enacted into Positive law is necessary, recourse must be had to original statutes themselves. *U.S. v. Welden, Mass. 1964, 84 S.Ct. 1082, 377 U.S. 95, 12 L. Ed.2d 152.* United States Statutes at Large must be promulgated in the Federal Register pursuant to Title 44 U.S.C. 1500 et seq. for general effect. No such statutes have been produced and mere prima facie law has no authority and jurisdiction over plaintiff's private person, private property or the sovereign Republic of California. The United States Code is only a prima facie statement of the statute law, and statutes collected in it do not change their meaning nor acquire any new force by their inclusion and if construction is necessary, recourse must be had to the original statutes themselves. *Murrell v. W. U. Tel. Co., C.C.A. Fla.1947, 160 F.2d 787.*

The official source to find United States law is the Statutes at Large,and the United States Code is only prima facie evidence of such laws. *Royer's, Inc. v. U.S., Pa. 1959, 265 F.2d 615.* The court in *Young v. I. R. S. , 596 F. Supp 141 (1984)* also cited as plaintiff'5 exhibit 7, a May 7, 1981, memorandum issued by the American Law Division of the Congressional Research Service of the Library of Congress entitled: "Why Title 26 of the United States Code Has Not

Been Enacted as Positive Law." The following statements are part of this report: "The Internal Revenue Code of 1954, as amended, does not meet the criteria for enactment into positive law.' "In addition, according to the Office of Law Revision Counsel, the Internal Revenue Code in its present form does not meet the standards of consistency and conformity which have been established for titles enacted into positive law."

3. Appellee's jurisdictional claim fails again by the fact there is no administrative authority over "private Citizens" from Title 26, when the authority cited at Sections 7801 and 7805 is from the Secretary of the Treasury, who is merely an unelected political appointee of the President to an Executive Branch appointment and holds no permanent position nor legislative authority to create laws or actions affecting the general population who are not specifically employed by the Department of the Treasury. Title 31 USC, Section 301(a), b) confirms this "appointment" and Title 5 USC, at Chapter 3--*POWERS*, Section 301 defines the limited authority of the "head of an executive department." 16 Am Jur 2d S 310. Distinction between judiciary and administrative agencies. What essentially distinguishes a court from an administrative agency is that under our constitutional system of separation of the three branches of government, courts are part of the judicial, whereas administrative agencies are part of the executive branch of the government. Bradly v. Bloomfield, 85 NJL. 506, 89 A 1009 (distinguishing "court" a branch of the government vested with judicial power from ministerial agencies of every kind

the Department of the Treasury-Internal Revenue Service, which is the EXECUTIVE BRANCH of government. A summons could not properly issue or originate from the Executive branch of government that has no authority or jurisdiction over sovereign citizens in the private sector. (See Title 31 USC, Sec. 301(a), (b); 4 USC Sec. 71, 72; and 5 USC Sec. 301).

6. There are no implementing regulations for administrative summons listed in the Parallel Table of Authorities and Rules whereas Section 7602 is shown as CFR 27 Parts 170, 296 that relate specifically to Alcohol, Tobacco Products and Firearms and no implementing regulations listed for the remaining sections 6420, 6421, and 6427. One agency shall not use another's regulations as clearly stated in:

1 CFR S 21.21 General requirements: References.

(b) Each agency shall publish its own regulations in full text. Cross-references to the regulations of another agency may not be used as a substitute for publication

3. *What did you ask the district court to do (for example, award damages, give injunctive relief, order your release from prison, etc.)?*

Request Order of Default Judgment under Federal Rule of Civil Procedure 55(b) for failure to respond to complaint; or Summary judgment pursuant to Federal Rule of Civil Procedure 56(c) based on no genuine issue of material fact to base a defense. Award damages of One Million dollars; cost of suit and expenses, including reasonable attorney's fees and such other and further relief to which

Appellant is justly entitled.

In exercising its discretion in determining whether to grant a default judgment, the district court may properly consider such factors as: (1) whether the defendant's failure to plead or otherwise defend is largely technical; (2) whether the plaintiff will be prejudiced if the default judgment is not entered, and if so, to what extent; and (3) whether entry of the default judgment would result in injustice. The policy reasons for allowing default judgment5 were expressed by the D.C. Federal Court in *H.F. Livermore Corporation v. ,Aktiengesellschaft Gebruder Loepfe, 432 F.2d 689 (D.C. 1970),* where the Court stated:

> [A] Default judgment must normally be viewed as available only when the adversary process has been halted because of an essentially unresponsive party. In this instance, the diligent party must be protected lest he be faced with interminable delay and continued uncertainty as to his rights.

The general rule is **that a court cannot adjudicate a controversy on its own motion**; it can **only do so** when the controversy is **presented to it by a party**, and **only** if the case is **presented to it in the form of a proper pleading**. A court has no power either to investigate facts or initiate proceedings.

Judge Wilken admits Appellee has failed to respond to the Complaint and absent a responsive pleading Judge Wilken has no basis for determining any position in favor of Appellee and having done so, violates statutory law.

(III) Judicial immunity

Appellee made no claim for judicial immunity, which is obvious by her failure to respond or answer the complaint, but even if she had made the claim, it could not hold because she acted without the required jurisdiction, thereby violating Constitutional rights, and the Supreme Court has decided and ruled that government officials CAN NOT escape liability for their actions in violating statutory and constitutional provisions of law, to wit:

> "Where an official could be expected to know that certain conduct would violate statutory or constitutional rights he (she) should be made to hesitate; and a person who suffers injury caused by such conduct may have a cause of action." *Pierson v. Ray, 386 U.S. 547, 554 (1967).*

Officers of the court have no immunity from liability when violating a constitutional right and may be held personally liable for damages under 42 U.S.C.A. 1983 for they are deemed to know the law. Knowing that they will be liable for all injurious conduct

4. *State the claim or claims you raised at the district court*

(I) Violation of the Constitution under Color of Office

(II) Lack of subject matter and personal jurisdiction

(III) Abuse of legal process

5. *What issues are you raising on appeal?*

(I) VIOLATIONS OF THE CONSTITUTION

Judge Wilken's dismissal of Appellant's Complaint denied the Appellant the Constitutional right to due process. The court's rulings on Service of the Complaint and judicial immunity are issues required to be raised by the defendant uader F.R.C.P Rule 8, and the court's arguments are points to be raised by the defendant in response to the Complaint, but to present such arguments from the beach is clearly a Constitutional violation of due process and equal protection of the law under the 14th Amendment.

(II) STATUTORY VIOLATION

Judge Wilken's acted as an "Attorney from the Bench" by responding to the Appellant's Complaint in support of Appellee and is a violation of Title 28 Sec. 454. *Practice of law by justices and judges.* Any justice or judge appointed under the authority of the United States who engages in the practice of law is, guilty of a high misdemeanor.

And, Judge Wilken had no power to either investigate facts or to initiate proceedings.

20 Am Jur 2d Sec. 20. Jurisdiction as dependent on application for relief. creates incentives for officials to err on the side of protecting citizens constitutionally protected rights. When they violate the constitutionally protected rights, they do so at their own peril. *Owen v. Independence, 100 S.Ct:. 1398, 1980 (445 U.S. 622 L.Ed.-?d 673); Maine v. Thiboutot, 1980, 100 S.Ct. 2502,*

448 U.S. 1, 65 L.Ed. 2d 555, Removes judicial immunity; *Hafer v. Melo, 502 U.S. 21, 1991.*

In Harlow v. Fitzgerld, Supreme Court Justice Blackmun stated, "I agree with the substantive standard announced by the Court today, imposing liability when a public-official defendant, knew or should have known, of the Constitutionally violate effect of his actions. This standard would not allow the official who actually knows that he was violating the law to escape liability for his actions, even if he could not 'reasonably have been expected' to know what he actually did know. Thus the cleaver and unusually well-informed violator of Constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies 'across the board', to all 'government officials' performing discretionary functions."

"JUDGE MADE LAW" FAILS TO PROVIDE IMMUNITY

Judge Wilken's presentation of judicial immunity has no merit as it is not based on legislative enacted statutory law. Her argument for judicial immunity is based on "judge made" case law which is a violation of the Constitution under the separation of power as supported by 16 Am Jur 2d Sec. 318 "...there can be no legislation by the courts or the executive branch of government."

Clearly, Judge Wilken has failed to refer to a statute to support her position for immunity but instead is relying solely on judicial case law.

NO JURISDICTION-NO IMMUNITY

Appellee could only have had jurisdiction in this matter through the issuance of a complaint, and she admits that no complaint was filed (See: Complaint C 97-2796 CW Exhibit C page 3, line 14-15). The courts jurisdiction was challenged but Appellee failed to prove jurisdiction was authorized through a legislative enacted statute.

"Where jurisdiction is challenged it must be proven." *Hagans v. Lavine, 415 U.S. 533.*

Judge Patel's reliance on Title 26 U.S.C. for jurisdiction requirements is misguided and her statement "Title 26 of the United States Code was indeed enacted into law and provides this court with subject matter jurisdiction ... "(See:Complaint C 97-2796 CW. Exhibit A, page 2, lines 23-26) is a totally erroneous statement not supported by facts. The FACT that Title 26 has not been enacted into positive law is proven by Title 1 Sec. 204(a) and submitted exhibits of the Preface Pages of the United States Code (See: Complaint C 97-2796 CW Exhibits E & F)and this fact is further supported by the most recent Congressional Research Service Report for Congress titled "Frequently Asked Questions Concerning the Federal Income Tax", dated December 5, 1996, page 9, paragraph 6, states, "Title 26, Internal Revenue, has not been enacted into positive law."

Judge Wilken erred in dismissing Appellant's Complaint by making a determination of immunity for Appellee because even had Appellee responded

to the Complaint, she had no jurisdiction.

A judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Mireles, 502 U.S. at 11; Stump, 435 U.S. at 356; Ashelman, 793 F.2d at 1075.

(IV) Abuse of legal process

Judge Wilkin in her **ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT** filed November 3, 1997, page 1, line 17-20 stated: "This matter will be decided on the papers that have been submitted. Having considered all of the papers filed by the parties, the Court denies the motion." The word "parties", as plural, could only mean the plaintiff AND JUDGE WILKIN, who acted as an attorney from the bench, since judge Wilkin acknowledged in the same paragraph that "Defendant has filed no opposition." Likewise, Wilkin's order stating: "Having considered all of the papers filed by the parties," raises the question of WHAT PAPERS? The only evidence of record is papers filed by the plaintiff, since she acknowledged that "Defendant has filed no opposition." Proof positive of Wilkins operating as an attorney from the bench is found when Wilkin filed her ORDER, with a five page argument supporting Appellee, while admitting 'Defendant has filed no opposition."

(V) All Appellant's claims listed in the Complaint are admitted as being true in accordance to F.R.C.P. 8(d).

Federal Rules of Civil Procedure Rule 8(b) Defenses; *Form of Denials*. A party shall state in short and plain terms the party's defenses to each claim asserted

and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of the averment, the party shall so state and this has the effect of a denial.

Federal Rules of Civil Procedure Rule 8(d) *Effect of Failure to Deny Averments.* In a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.

6. *Did you present all these issues to the district court?*

NO (Yes/No) If not, why?

Court decided case without defendant answering and/or rebutting complaint and appellant was not given opportunity to appear. Appellant requested an entry of default, that Judge Wilkin denied, filed a Motion for Default, Notice of Motion for Default, and an Order for Default, which were also denied.
Appellant filed a Motion for Leave to file a Motion for Reconsideration on December 11, 1997, where the F.R.C.P. Rule 8(b) and 8(d) would have been presented, but the court denied the Motion which prevented the presentation of these rules.

7. *What law supports these issues on appeal?* (You may, but need not, refer to cases and statutes.)

(I) Constitutional right for *redress of grievances.*

Appellant's rights under the First Amendments to the Constitution have been

denied. Appellant has been denied the right to equal protection under the law; the right to substantive and procedural due process under the Fifth Amendment.

(II) Lack Of subject matter and personal jurisdiction There is no subject matter jurisdiction without a summons and complaint under Rule 4(a) of the Federal Rules of Civil Procedure. The ultimate source of subject matter jurisdiction is the Constitution itself, where Article 3, Sec. 2, lists its outer limits as follows:

ARTICLE III

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States,...

PERSONAL JURISDICTION

The rule that governs the summons governs the whole topic of jurisdiction of the person, which is the principle of civil procedure. Rule 4 regulates personal jurisdiction single-handedly and subdivision (a) governs the issuance of the summons, which the clerk issues in federal practice.

It takes an Act of Congress (a statute) to actually confer the jurisdiction on a district court, and the presence of subject matter jurisdiction, usually with a citation of the jurisdiction-conferring statute, must be demonstrated by the plaintiff in every case.

There must be a "process" by any paper whereby a person is subjected to a courts jurisdiction or otherwise made to comply with its demands.

8. *Do you have any other cases pending in this court? If so, give the name and docket number of each case. NONE*

9. *Have you filed any previous cases which have been decided by this court?* If so, give the name and docket number of each case.

Sherwood v. United States No. 97-15034

10. *For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court?* N/A

Dated: April 6, 1998

signed RAYMOND B. SHERWOOD

1612 Merian Dr.

Pleasant Hill, Calif. 94523

U.S. District Court TERMED APPEAL

U.S. District for the Northern District of California (Oakland)

CIVIL DOCKET FOR CASE #: 97-CV-2796

Sherwood, et al v. Patel Filed: 07/30/97

Assigned to: Judge Claudia Wilken Jury demand: Plaintiff

Demand: $0,000 Nature of Suit: 890

Lead Docket: None Jurisdiction: Federal Question

Dkt # in other court: None

Cause: 28:1331 Fed. Question

RAYMOND BAILEY SHERWOOD	Raymond Bailey Sherwood
Plaintiff	(COR LD NTC) [PRO SE]
MARILYN HALL PATEL, Chief	1612 Merian Dr.
Judge	Pleasant Hill, CA 94523
Defendant	510-827-2604

Proceedings include all events

4:97cv2796 1 Sherwood, et al v. Patel Termed Appeal

7/30/97 1 COMPLAINT yes Summons (es) issued; Fee status pd entered on 7/30/97 in the amount of $ 150.00 (Receipt No.43405); jury demand [4 : 97-cv-02796] (db)

7/30/97 3 NOTICE OF FILING of Verification, by Plaintiff Raymond Bailey Sherman (Sherwood) [4 : 97-cv-02796] (db)

7/30/97 2 ORDER SETTING CASE MANAGEMENT CONFERENCE by Judge Claudia W'Liken : initial case management conference will be held 10:30 10/31/97 . (cc: all counsel) (cp)[Entry date 08/04//971

10/3/97 4 RETURN OF SERVICE executed upon defendant Marilyn Hall Patel on 8/1/97 [4:97-cv-027961 (cp) [Entry date 10/06/97]

10/3/97 5 MOTION by Plaintiff Raymond Bailey Sherwood for entry of default as to Marilyn Hall Patel [4:97-cv-02796] (cp) [Entry date 10/06/97]

10/3/97 6 NOTICE OF MOTION AND MOTION before Judge Claudia Wilken by Plaintiff Raymond Bailey Sherwood for judgment by default with Notice set for 11/7/97 at 10:00am [4:97-cv-02796] (cp) [Entry date 10/06/971

10/3/97 7 DECLARATION by Raymond Bailey Sherwood on behalf of Plaintiff re motion for judgment by default [6-11 [4:97-cv-027961 (cp) [Entry date 10/06/971

10/3/97 8 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [7-11, motion for judgment by default [6-11, motion for entry of default as to Marilyn Hall Patel [5-1] (4:97-cv-027961 (cp) [Entry date 10/06/971

10/20/97 9 CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed by plaintiff. [4:97-cv-027961 (cp) [Entry date 10/28/971

10/31/97 10 ORDER by Judge Claudia Wilken Case Management Conference reset for 1:30 1/9/98 ( ) (cc: all counsel) [4:97-cv-027961 (kk) [Entry date 11/01/971

11/3/97 11 ORDER by Judge Claudia Wilken denying motion for judgment by default [6-11, denying motion for entry of default as to Marilyn Hall Patel [5-11 (Date Entered: 11/6/97) (cc: all counsel) [4:97-cv-027961 (cp) [Entry date 11/06/97]

11/12/97 12 NOTICE by Plaintiff Raymond Bailey Sherwood of motion to vacate order denying motion for default judgment [4:97-cv-027961 (cp) [Entry date 11/14/971

11/12/97 13 MOTION before Judge Claudia Wilken by Plaintiff Raymond Bailey Sherwood to vacate order denying motion for default judgment with Notice set for 12/12/97 at 10:00am [4:97-cv-027961 (cp) [Entry date 11/14/97]

11/12/97 14 DECLARATION by Raymond Bailey on behalf of PlaintiffF re motion to vacate order denying motion for default judgment [13—I-) [4:97-cv-02796] (cp) [Entry date 11/14/97]

11/12/97 15 NOTICE by Plaintiff of motion to vacate order continuing case management conference [4:97-cv-027961 (cp) [Entry date 11/14/971

11/12/97 16 MOTION before Judge Claudia Wilken by Plaintiff to vacate continuing case management conference with Notice set for 12/12/97 at 10:00am [4:97-cv-027961 (cp) [Entry date 11/14/97]

11/12/97 17 DECLARATION by Raymond Bailey on behalf of Plaintiff re motion to vacate continuing case management conference [16-1] [4:97-cv-02796] (cp) [Entry date 11/14/97]

11/12/97.....18 PROOF OF SERVICE by Plaintiff of declaration [17-11, motion to vacate continuing case management conference [16-11], notice [15-1] , declaration [14-1], motion to vacate order denying motion for default judgment [13-1], notice [12-1] [4:97-cv-027961 (c-c) [Entry date 11/14/97]

11/13/97 19 AMENDED NOTICE of hearing by Plaintiff Raymond Bailey Sherwood setting motion to vacate continuing case management conference [16-1]; hearing set for 10:00 12/19/97 [4:97-cv-02796] (cp) [Entry date 11/17/97]

11/13/97 20 AMENDED NOTICE of hearing by Plaintiff Raymond Bailey Sherwood setting motion to vacate order denying motion for default judgment [13-1]; hearing set for 10:00 12/19/97 [4:97-cv-027961 (cp) [Entry date 11/17/97]

11/13/97 21 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of motion notice [20-1], motion notice [19-1] [4:97-cv-02796] (cp) [Entry date 11/17/971

11/25/97 22 ORDER by Judge Claudia Wilken denying motion to vacate continuing case management conference [16-1], denying motion to vacate order denying motion for default judgment (13-1) VACATING hearing set for 12/19/97 (Date Entered: 12/l/97) (cc: all counsel) [4:97-cv-027961 (cp) [Entry date 12/01/97]

12/1/97 23 MOTION and declaration by Plaintiff Raymond Bailey Sherwood for entry of default as to Marilyn Hall Patel [4:97-cv-02796] (cp) [Entry date 12/03/97]

12 /1/ 97 – RECEIVED resubmitted entry of default submitted by Plaintiff Raymond Bailey Sherwood [4:97-cv-02796] (cp) [Entry date 12/03/97]

12/'l/'97 24 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of document received [0-01 motion for entry of default as to Marilyn Hall Patel [23-l] [4:97-cv-02796] (cp) [Entry date 12//03//971

12/1//97 – DEFAULT DECLINED as to defendant Marilyn Hall Patel (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 12/03/97]

12/10/97 25 COPY OF LETTER dated 12/8/97 from Raymond Bailey Sherwood to Susan L. Kamlet re: service [4:97-cv-02796] (cp) (Entry date 12/11/97)

12/11/97 26 NOTICE by Plaintiff Raymond Bailey Sherwood of motion for leave to file a motion for reconsideration [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 27 MOTION before Judge Claudia Wilken by Plaintiff Raymond Bailey Sherwood for leave to file a motion for reconsideration with Notice set for 1/16/98 at 10:00am [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 28 DECLARATION by Raymond Bailey (Sherwood) on behalf of Plaintiff re motion for leave to file a motion for reconsideration [27-1] [4:97-cv-027961 (cp) [Entry date 12/12/97]

12/11/97 29 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [28-11, motion for leave to file a motion for reconsideration [27-1], notice [26-1] [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 30 RETURN OF SERVICE executed upon U.S. Dept. of Justice on 12/9/97 [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 31 RETURN OF SERVICE executed upon Attorney General Janet Reno on 12/9/97 [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/18/97 32 ORDER by Judge Claudia Wilken denying motion for leave to file a motion for reconsideration [27-1] hearing set for 1/16/98 is vacated (Date Entered: 12/23/97) (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 12/23/97]

12/22/97 33 RETURN OF SERVICE executed on 12/15/97 upon Atty. General, Janet Reno [4:97-cv-02796] (cp) [Entry date 12/30/97]

12/22/97 34 RETURN OF SERVICE executed on 12/10/97 upon U.S. Atty. [4:97-cv-027961 (cp) [Entry date 12/30/97]

12/22/97 35 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of subpoena [4:97-cv-02796] (cp) [Entry date 12/30/97]

1/5/98 36 CERTIFICATE by Plaintiff Raymond Bailey Sherwood of non-compliance [4:97-cv-02796] (cp) [Entry date 01/06/98]

1/9/98 37 MINUTES: (C/R Rosita- Flores) (Hearing Date: 1/9/98) case management conference held; no apperance by plaintiff [4:97-cv-02796] (cp) [Entry date 01/16/98]

1/16/98 38 ORDER by Judge Claudia Wilken dismissing case for failure to prosecute ; appeal filing ddl 3/17/98 (Date Entered: 1/16/98) (cc: all counsel) [4:97-cv-02796] (cp)

1/26/98 39 OBJECTIONS by Plaintiff Raymond Bailey Sherwood to order [38-2] [4:97-cv-02796] (cp) [Entry date 01/27/98]

1/26/98 40 DECLARATION by Raymond Bailey on behalf of Plaintiff Raymond Bailey Sherwood re objection [39-1] [4:97-cv-027961 (cp) [Entry date 01/27/98]

1/26/98 41 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [40-1], objection [39-1] [4:97-cv-027961 (cp) [Entry date 01/27/98]

3/10/98 42 ORDER by Judge Claudia Wilken that the court overrules plaintiff's objection to the court's order of dismissal and reaffirms dismissal of this case; no more filings shall be received in this closed docket (Date Entered: 3/13/98) (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 03/13/98]

3/20/98 43 NOTICE OF APPEAL by Plaintiff Raymond Bailey Sherwood from District Court decision order [42-1] Fee status paid, receipt #804671 [4:97-cv-02796] (cp)

3/20/98 44 TRANSCRIPT DESIGNATION and Ordering Form filed by Plaintiff Raymond Bailey Sherwood for dates NOT ORDERING TRANSCRIPT C/R: ; appeal [43-1] [4:97-cv-02796] (cp)

3/20/98 -- Docket fee notification form and case information sheet to USCA [43-1] [4:97-cv-02796] (cp)

3/20/98 -- Copy of notice of appeal and docket sheet to all counsel [4:97-cv-02796] (cp)

3/20/98 -- CERTIFICATE of Record mailed to USCA, counsel notified. [4:97-cv-02796] (cp)

Docket as of March 20, 1998 11:46 am

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 97-02796 CW

RAYMOND BAILEY SHERWOOD,

Plaintiff,

v.

MARILYN HALL PATEL.

Defendant.

/

ORDER REAFFIRMING DISMISSAL OF CASE

Plaintiff objects to the Court's Order of Dismissal entered on January 18, 1998 and requests that it be set aside. In that Order the Court dismissed this case for failure to prosecute when Plaintiff failed to attend the Case Management Conference held on January 9, 1998. Plaintiff states that he did not attend the January 9 Case Management Conference because he had received a telephone message from the Court advising him that it had been rescheduled to January 16, 1998. Plaintiff states that he subsequently received written notice from the Court vacating the Case Management Conference scheduled for January 16.

Plaintiff is incorrect. However, even if he were correct, this case was properly dismissed. As explained in the Court's Order Denying Plaintiff's Motion for Default Judgment, Defendant Judge Marilyn Hall Patel is protected from lawsuits by absolute judicial immunity. Moore V. 1 96 F-3d 1240, 1243 (9th Clr.

1996), cert. denied, 117 S. Ct. 963 (1997). Judicial immunity applies even when the judge acts erroneously, or in excess of judicial authority or the act is injurious to the plaintiff. Id. at 1244.

Plaintiff continues to contend that he is suing Judge Patel in her individual capacity, not in her official capacity as a judge. However, as explained in the Order Denying Plaintiff's Motion for Default Judgment, Judge Patel was acting in her official capacity as a judge when she issued the order to show cause which is the subject of Plaintiff's complaint. Judge Patel is immune from Plaintiff's civil suit for damages because it is based upon her judicial actions.

Because Plaintiff has failed to state a justiciable claim against Judge Patel, this case was properly dismissed.

CONCLUSION

For the foregoing reasons, the Court overrules Plaintiff's objection to the Court's Order of Dismissal and reaffirms dismissal of this case. The clerk shall close the file and no more filings shall be received in this closed docket.

IT IS SO ORDERED.

Dated: MAR 10 1998

signed CLAUDIA WILKEN

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWOOD

Plaintiff,

v.

MARILYN HALL PATEL, Judge

Defendant.

_____/

No. C 97-02796 CW

ORDER OF DISMISSAL

On October 31, 1997, the Court issued an Order Continuing Case Management Conference wherein the Case Management Conference, previously set for October 31, 1997, was continued to January 9, 1998, at 1:30 p.m. On January 9, 1998, a Case Management Conference was held. Sue Kamlet, Assistant U. S. Attorney, specially appeared on behalf of the Defendant. No appearance was made by or on behalf of the Plaintiff. Accordingly,

IT IS HEREBY ORDERED that the above-captioned action is DISMISSED for failure to prosecute.

Dated: JAN 13 1998

signed: CLAUDIA WILKEN

United States District Juidge

A-31 cont.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH DISTRICT

RAYMOND BAILEY SHERWOOD, No. 98-15496

Plaintiff-Appellant, D.C. No. CV-97-02796CW

V.

MARILYN HALL PATEL, MEMORANDUM

Defendant-Appellee.

_____/

Appeal from the United States District Court

For the Northern Division of California

Claudia Wilken, District Judge, Presiding

Submitted July 20, 1998

Before: HUG, Chief Judge, SCHROEDER and KOZINSKI, Circuit Judges.

Raymond Bailey Sherwood appeals pro se the district court's order reaffirming its dismissal of his action against District Court Judge Patel. Sherwood seeks damages arising when Judge Patel issued an order to show cause in an action involving Sherwood and the Internal Revenue Service. We agree with the district court, thjat Judge Patel was entitled to judicial immunity because she was acting within her official capacity as a judge when she issued the order. See Moore v. Brewster, 96 F.3d 1240, 1243-44 (9th Cir. 1996).

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 98-15496

CT / AG# CV-97-02796-CW

RAYMOND BAILEY SHERWOOD

Plaintiff - Appellant

v.

MARILYN HALL PATEL, Chief Judge

Defendant- Appellee

APPEAL FROM the United States District Court for the Northern Division of California (Oakland) .

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern Division of California (Oakland) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFRIMED.

Filed and entered July 24, 1998

UNITED STATES COURT OFAPPEALS

FOR THE NINTH CIRCUIT

Raymond Bailey Sherwood — No. 98-15496

Plaintiff-Appellant — D.C. No. CV 97 02796 CW

v.

Marilyn Hall Patel,

Defendant-Appallee.

_____/

PURPOSE

Appellant respectfully submits this PETITION FOR REHEARING under FRAP 40,Mthin the allotted 45 days from entry of judgment dated July 24, 1998. This PETITION is based upon material points of fact and law overlooked in the decision and an apparent conflict with another decision of the Court which was not addressed in the opinion.

INTRODUCTION

Federal District Court Judge Marilyn Hall Patel issued a Court Order based upon an Administrative Summons that was not supported by enacted legislative statutes which leaves Judge Patel without any authority for issuing such Order. Judge Patel could establish jurisdiction if a Complaint had been filed in this matter but Judge Patel acknowledged that no complaint had been filed and

therefore Judge Patel could have no jurisdiction in the matter. Appellant filed an action in District Court to resolve the issue but Judge Patel failed to respond to the Complaint and relied upon District Court Judge Wilkens, to act as an Attorney from the Bench to base a defense of Judicial immunity.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

95 Seventh Street, P. 0. Box 193939

San Francisco, CA 94119-3939

August 18, 1998

TO: Raymond Bailey Sherwood

FROM: Cathy A. Catterson, Clerk

By: Marian Foreman, Deputy Clerk

SUBJECT: Defective Petition for Rehearing

RE: CA NO. 98-15496 Sherwood v. Patel

A petition for rehearing in the referenced case was received on AUGUST 17, 1998 and could not be filed for the following reason(s):

( ) The petition was received late. A motion for leave to file it late must be submitted.

(X) The petition was received late and the mandate has been issued. A motion to recall the mandate must be submitted.

( ) An insufficient number of copies of the petition were received. Please submit an additional _____copies immediately and the petition will be filed.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Raymond Bailey Sherwood No. 98 15496

Plaintiff-Appellant

MOTION TO RECALL MANDATE

v.

Marilyn Hall Patel

Defendant-Appallee'

_____/

Appellant submits this MOTION TO RECALL MANDATE based upon the following facts; The Court Issued an Entry of Judgment dated July 24, 1998 and the notice in the Entry of Judgment indicates that when the United States or an Officer or Agent is involved 45 days are allotted to file for a Petition for Rehearing. The defendant is United States Federal District Judge Marilyn Hall Patel which clearly qualifies the 41day time frame and allows up to a date of September 7, 1998 for filing a petition. Appellant filed within that time period (filed August 17, 1998) thereby complying with the requirements for filing a PETITION FOR REHEARING. Appellant respectfully requests the Court to grant Appellant's Motion and Recall the Mandate.

Respectfully Submitted,

Signed RAYMOND B. SHERWOOD Dated August 25, 1998

UNITED STATES COURT OF APPEALS

FOR THE NINTH- CIRCUIT

RAYIMOND BAILEY SHERWOOD

Plaintiff – Appellant

V.

MARILYN HALL PATEL, Chief Judge

Defendant - Appellee

USCA NO.: 98-15496

DC#: CV-97-02796-CW

The mandate in this appeal filed on August 17, 1998 was issued

Prematurely and is hereby recalled.

FOR THE COURT:

Cathy A. Catterson

Clerk of Court

By:signed MARIAN FOREMAN

Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Raymond B. Sherwood

Appellant / Petitioner

CASE NO. 98-15496

v.

Marilyn Hall Patel

Appellee / Respondent

APPELLANT'S MOTION FOR SUMMARY DISPOSITION

Introduction

The appellant, Raymond B. Sherwood, hereby moves for summary disposition as defined in Circuit Rule 3-6 (b).

The appellant has filed an informal brief in the above-captioned appeal from the district court's March 10, 1998 Order Reaffirming Dismisal of Case. Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Circuit Rule 3-6, the appellant moves for summary disposition in appellant's favor. Summary disposition is proper because it is 'clearly ascertainable" from a review of the record that the appellee has failed to respond to this appeal.

Factual and Procedural Back-ground

Appellant filed a Complaint on July 30, 1997, in Federal District Court, Case No. C 97-2796 CW, against Federal Judge Marilyn Hall Patel, citing abuse of legal process; ruling with want of jurisdiction and for violation of Constitutional due

process of law. The record will show that Judge Patel failed to answer the Complaint or respond in any manner. The record will also show that the only response to the Complaint was made by Judge Claudia Wilken who acted as an Attorney from the Bench in defending Judge Patel by countering appellant's arguments and disposing of appellant's issues and motions with rulings of denial.

The Appeal's Court Time Schedule Order filed Mar. 24, 1998 required the appellant to file his brief by 5/4/98. FRAP 31 (a) states, the appellee shall serve and file a brief within 30 days after service of the brief of the appellant." Appellant's Opening Brief was filed April 6, 1998, but, regardless of which date the 30 day reply requirement applies, the FACT is, no response or reply has been made by the appellee to this appeal.

Discussion

Judge Patel in her capacity as a Federal Judge has to have knowledge that she is required by the Federal Rules of Civil Procedure where Rule 8(b) addresses Defenses: Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of the averment, the party shall so state and this has the effect of a denial.

There is no evidence in the record that Judge Patel offered any defense, either personally or by Counsel, to the averments listed in the appellant's Complaint.

FRCP Rule 8(d) addresses Effect of Failure to Denv. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments In a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

If Judge Patel was entitled to judicial immunity in this instance she would, by the requirements of Rule 8 FRCP, be mandated to respond to the Complaint with a judicial immunity defense, and by failing to respond to the Complaint Judge Patel has admitted she abused the legal process; ruled with want of jurisdiction and violated Constitutional due process.

Conclusion

Judge Patel has continued her pattern of non-response in the appeal process and with her failure to respond comes the justification for the Circuit Court to grant the appellants Motion for Summary Disposition.

Respectfully submitted,

Signed RAYMOND B. SHERWOOD Dated: November 30, 1998

1612 Merian Drive

Pleasant Hill, Calif. 94523

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND BAILEY SHERWOOD, No. 98-15496

Plaintiff-Appellant,

DC # CV-97-02796-CW

v. Northern California (Oakland)

MARILYN HALL PATEL, Chief Judge, ORDER

Defendant-Appellee.

_____/

Before Chief Judge Hug, Schroeder, Kozinski, Circuit Judges

The petition for rehearing is denied.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Raymond B- Sherwood — NO- 98--15496

Plaintiff -Appellant, — D.C. No. CV-97-02796-CW

v. — MOTION TO RECALL MANDATE SUGGESTION FOR REHEARING EN BANC

Marilyn Hall Patel,

Defendant – Appellee

_____/

Appellant submits this MOTION TO RECALL MANDATE under FRCP Rule 27, and plaintiff makes a SUGGESTION FOR REHEARING-EN BANC based upon FRAP Rule 35, Circuit Rule 35 because the proceeding involves a question of exceptional importance and appears to be a matter of first Impression."

Background

District Court Judge Marilyn Hall Patel very well may be entitled to judicial immunity because she was acting within her official capacity as a judge when she issued the order. However, judicial immunity does not recuse a federal judge from responding to a Complaint nor does judicial immunity recuse a federal judge from responding to an Appeal and the court record, as indicated by the Court Docket, clearly establishes the fact that federal judge Marilyn Hall Patel failed to respond in an manner to either the Complaint or the Appeal.

Discussion

The Federal Rules of Civil Procedure require a defensive response to a complaint.

Rule 8(b) Defenses; Form of Denials.

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of the averment, the party shall so state and this has the effect of a denial.

Judge Patel is required by Rule 8(b) to respond to appellant's Complaint and in this instance a claim of judicial immunity may have held. However, because Judge Patel failed to respond to the Complaint she has admitted she acted without jurisdiction by failing to deny appellant's claim in a responsive pleading, as found in FRCP Rule 8(d) and Rule 10(b).

Rule 8(d) Effect of Failure to Deny.

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

Rule 10(b) Each claim founded upon a separate transaction or occurrence and each defense, other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

Conclusion

Article 3 Section 1 of the United States Constitution mandates judges to hold their office in good behavior and affords no special privileges to avoid requirements of law. Appellant respectfully requests the Court to find federal judge Marilyn Hall Patel to be without judicial immunity based upon her failure to make a judicial immunity claim and uphold appellant's cause.

Respectfully submitted,

Signed RAYMOND B. SHERWOOD

Dated: December 29, 1998

U.S. District Court TERMED APPEAL

U.S. District for the Northern District of California (Oakland)

CIVIL DOCKET FOR CASE #: 97-CV-2796

Sherwood, et al v. Patel Filed: 07/30/97

Assigned to: Judge Claudia Wilken Jury demand: Plaintiff

Demand: $0,000 Nature of Suit: 890

Lead Docket: None Jurisdiction: Federal Question

Dkt # in other court: None

Cause: 28:1331 Fed. Question

RAYMOND BAILEY SHERWOOD	Raymond Bailey Sherwood
Plaintiff	(COR LD NTC) [PRO SE]
MARILYN HALL PATEL, Chief	1612 Merian Dr.
Judge	Pleasant Hill, CA 94523
Defendant	510-827-2604

Proceedings include all events

4:97cv2796 1 Sherwood, et al v. Patel Termed Appeal

7/30/97 1 COMPLAINT yes Summons (es) issued; Fee status pd entered on 7/30/97 in the amount of $ 150.00 (Receipt No.43405); jury demand [4 : 97-cv-02796] (db)

7/30/97 3 NOTICE OF FILING of Verification, by Plaintiff Raymond Bailey Sherman (Sherwood) [4 : 97-cv-02796] (db)

7/30/97 2 ORDER SETTING CASE MANAGEMENT CONFERENCE by Judge Claudia W'Liken : initial case management conference will be held 10:30 10/31/97 . (cc: all counsel) (cp)[Entry date 08/04//971

10/3/97 4 RETURN OF SERVICE executed upon defendant Marilyn Hall Patel on 8/1/97 [4:97-cv-027961 (cp) [Entry date 10/06/97]

10/3/97 5 MOTION by Plaintiff Raymond Bailey Sherwood for entry of default as to Marilyn Hall Patel [4:97-cv-02796] (cp) [Entry date 10/06/97]

10/3/97 6 NOTICE OF MOTION AND MOTION before Judge Claudia Wilken by Plaintiff Raymond Bailey Sherwood for judgment by default with Notice set for 11/7/97 at 10:00am [4:97-cv-02796] (cp) [Entry date 10/06/971

10/3/97 7 DECLARATION by Raymond Bailey Sherwood on behalf of Plaintiff re motion for judgment by default [6-11 [4:97-cv-027961 (cp) [Entry date 10/06/971

10/3/97 8 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [7-11, motion for judgment by default [6-11, motion for entry of default as to Marilyn Hall Patel [5-1] (4:97-cv-027961 (cp) [Entry date 10/06/971

10/20/97 9 CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed by plaintiff. [4:97-cv-027961 (cp) [Entry date 10/28/971

10/31/97 10 ORDER by Judge Claudia Wilken Case Management Conference reset for 1:30 1/9/98 ( ) (cc: all counsel) [4:97-cv-027961 (kk) [Entry date 11/01/971

11/3/97 11 ORDER by Judge Claudia Wilken denying motion for judgment by default [6-11, denying motion for entry of default as to Marilyn Hall Patel [5-11 (Date Entered: 11/6/97) (cc: all counsel) [4:97-cv-027961 (cp) [Entry date 11/06/97]

11/12/97 12 NOTICE by Plaintiff Raymond Bailey Sherwood of motion to vacate order denying motion for default judgment [4:97-cv-027961 (cp) [Entry date 11/14/971

11/12/97 13 MOTION before Judge Claudia Wilken by Plaintiff Raymond Bailey Sherwood to vacate order denying motion for default judgment with Notice set for 12/12/97 at 10:00am [4:97-cv-027961 (cp) [Entry date 11/14/97]

11/12/97 14 DECLARATION by Raymond Bailey on behalf of PlaintiffF re motion to vacate order denying motion for default judgment [13--l-) [4:97-cv-02796] (cp) [Entry date 11/14/97]

11/12/97 15 NOTICE by Plaintiff of motion to vacate order continuing case management conference [4:97-cv-027961 (cp) [Entry date 11/14/971

11/12/97 16 MOTION before Judge Claudia Wilken by Plaintiff to vacate continuing case management conference with Notice set for 12/12/97 at 10:00am [4:97-cv-027961 (cp) [Entry date 11/14/97]

11/12/97 17 DECLARATION by Raymond Bailey on behalf of Plaintiff re motion to vacate continuing case management conference [16-1] [4:97-cv-02796] (cp) [Entry date 11/14/97]

11/12/97.....18 PROOF OF SERVICE by Plaintiff of declaration [17-11, motion to vacate continuing case management conference [16-11], notice [15-1] , declaration [14-1], motion to vacate order denying motion for default judgment [13-1], notice [12-1] [4:97-cv-027961 (c-c) [Entry date 11/14/97]

11/13/97 19 AMENDED NOTICE of hearing by Plaintiff Raymond Bailey Sherwood setting motion to vacate continuing case management conference [16-1]; hearing set for 10:00 12/19/97 [4:97-cv-02796] (cp) [Entry date 11/17/97]

11/13/97 20 AMENDED NOTICE of hearing by Plaintiff Raymond Bailey Sherwood setting motion to vacate order denying motion for default judgment [13-1]; hearing set for 10:00 12/19/97 [4:97-cv-027961 (cp) [Entry date 11/17/97]

11/13/97 21 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of motion notice [20-1], motion notice [19-1] [4:97-cv-02796] (cp) [Entry date 11/17/971

11/25/97 22 ORDER by Judge Claudia Wilken denying motion to vacate continuing case management conference [16-1], denying motion to vacate order denying motion for default judgment (13-1) VACATING hearing set for 12/19/97 (Date Entered: 12/l/97) (cc: all counsel) [4:97-cv-027961 (cp) [Entry date 12/01/97]

12/1/97 23 MOTION and declaration by Plaintiff Raymond Bailey Sherwood for entry of default as to Marilyn Hall Patel [4:97-cv-02796] (cp) [Entry date 12/03/97]

12 /1/ 97 – RECEIVED resubmitted entry of default submitted by Plaintiff Raymond Bailey Sherwood [4:97-cv-02796] (cp) [Entry date 12/03/97]

12/'l/'97 24 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of document received [0-01 motion for entry of default as to Marilyn Hall Patel [23-l] [4:97-cv-02796] (cp) [Entry date 12//03//971

12/1//97 – DEFAULT DECLINED as to defendant Marilyn Hall Patel (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 12/03/97]

12/10/97 25 COPY OF LETTER dated 12/8/97 from Raymond Bailey Sherwood to Susan L. Kamlet re: service [4:97-cv-02796] (cp) (Entry date 12/11/97)

12/11/97 26 NOTICE by Plaintiff Raymond Bailey Sherwood of motion for leave to file a motion for reconsideration [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 27 MOTION before Judge Claudia Wilken by Plaintiff Raymond Bai'ey Sherwood for leave to file a motion for reconsideration with Notice set for 1/16/98 at 10:00am [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 28 DECLARATION by Raymond Bailey (Sherwood) on behalf of Plaintiff re motion for leave to file a motion for reconsideration [27-1] [4:97-cv-027961 (cp) [Entry date 12/12/97]

12/11/97 29 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [28-11, motion for leave to file a motion for reconsideration [27-1], notice [26-1] [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 30 RETURN OF SERVICE executed upon U.S. Dept. of Justice on 12/9/97 [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 31 RETURN OF SERVICE executed upon Attorney General Janet Reno on 12/9/97 [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/18/97 32 ORDER by Judge Claudia Wilken denying motion for leave to file a motion for reconsideration [27-1] hearing set for 1/16/98 is vacated (Date Entered: 12/23/97) (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 12/23/97]

12/22/97 33 RETURN OF SERVICE executed on 12/15/97 upon Atty. General, Janet Reno [4:97-cv-02796] (cp) [Entry date 12/30/97]

12/22/97 34 RETURN OF SERVICE executed on 12/10/97 upon U.S. Atty. [4:97-cv-027961 (cp) [Entry date 12/30/97]

12/22/97 35 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of subpoena [4:97-cv-02796] (cp) [Entry date 12/30/97]

1/5/98 36 CERTIFICATE by Plaintiff Raymond Bailey Sherwood of non-compliance [4:97-cv-02796] (cp) [Entry date 01/06/98]

1/9/98 37 MINUTES: (C/R Rosita- Flores) (Hearing Date: 1/9/98) case management conference held; no apperance by plaintiff [4:97-cv-02796] (cp) [Entry date 01/16/98]

1/16/98 38 ORDER by Judge Claudia Wilken dismissing case for failure to prosecute ; appeal filing ddl 3/17/98 (Date Entered: 1/16/98) (cc: all counsel) [4:97-cv-02796] (cp)

1/26/98 39 OBJECTIONS by Plaintiff Raymond Bailey Sherwood to order [38-2] [4:97-cv-02796] (cp) [Entry date 01/27/98]

1/26/98 40 DECLARATION by Raymond Bailey on behalf of Plaintiff Raymond Bailey Sherwood re objection [39-1] [4:97-cv-027961 (cp) [Entry date 01/27/98]

1/26/98 41 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [40-1], objection [39-1] [4:97-cv-027961 (cp) [Entry date 01/27/98]

3/10/98 42 ORDER by Judge Claudia Wilken that the court overrules plaintiff's objection to the court's order of dismissal and reaffirms dismissal of this case; no more filings shall be received in this closed docket (Date Entered: 3/13/98) (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 03/13/98]

3/20/98 43 NOTICE OF APPEAL by Plaintiff Raymond Bailey Sherwood from District Court decision order [42-1] Fee status paid, receipt #804671 [4:97-cv-02796] (cp)

3/20/98 44 TRANSCRIPT DESIGNATION and Ordering Form filed by Plaintiff Raymond Bailey Sherwood for dates NOT ORDERING TRANSCRIPT C/R: ; appeal [43-1] [4:97-cv-02796] (cp)

3/20/98 – Docket fee notification form and case information sheet to USCA [43-1] [4:97-cv-02796] (cp)

3/20/98 – Copy of notice of appeal and docket sheet to all counsel [4:97-cv-02796] (cp)

3/20/98 – CERTIFICATE of Record mailed to USCA, counsel notified. [4:97-cv-02796] (cp)

Docket as of March 20, 1998 11:46 am

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
Plaintiff

No. C- 96-1828 (MHP)

v.

RAYMOND B. SHERWOOD
Respondent

_____/

PAGES 1 –16

SAN FRANCISCO, CALIFORNIA
JULY 26, 1996

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARILYN HALL PATEL

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
TAX DIVISION
FEDERAL BUILDING, 450 GOLDEN GATE AVE.
SAN FRANCISCO, CALIF. 94102

BY: DAVID DENIER, ASSISTANT UNITED STATES ATTORNEY

REPORTED BY: KAY C. HILL, CSR, RMR
CSR #2368

THE CLERK: CIVIL ACTION 96-1828, UNITED STATES VERSUS RAYMOND SHERWOOD FOR AN ORDER TO SHOW CAUSE.

COUNSEL, YOUR APPEARANCES, PLEASE.

MR. SHERWOOD: RAYMOND SHERWOOD RESPONDENT.

MR. DENIER: DAVE DENIER, UNITED STATES TAX DIVISION. GOOD MORNING, YOUR HONOR.

THE COURT: GOOD AFTERNOON.

MR. SHERWOOD, WHERE DID YOU GET THE IDEA THAT THE INTERNAL REVENUE CODE HAS NOT BEEN VALIDLY ADOPTED, THAT SOMEHOW THERE IS NO CONSTITUTIONAL JURISDICTION OVER YOU, OR OTHER KIND OF JURISDICTION OVER YOU, AND THAT YOU ARE NOT SUBJECT TO THE INTERNAL REVENUE CODE AND SO FORTH WHERE DID YOU GET THOSE IDEAS FROM? WHAt MAKES YOU DIFFERENT FROM EVERY OTHER CITIZEN IN THIS COUNTRY, OR NOT EVEN CITIZEN, JUST CITIZENS, PERSONS WHO LIVE HERE AND WORK HERE AND ARE ALIENS, OR ONES WHO ARE NOT HERE LAWFULLY PLUS PAY TAXES?

MR. SHERWOOD : I MADE NO CLAIM OF BEING A RESIDENT ALIEN OR ANYTHING LIKE THAT, YOUR HONOR.

THE COURT: HOW DO YOU – IF YOU ARE-A CITIZEN, HOW DO YOU

AVOID PAYING TAXES, OR BEING ACCOUNTABLE FOR A DETERMINATION AS TO WHAT TAX LIKBILITY YOU MAY HAVE, WHAT SETS YOU APART FROM ALL THOSE OTHER PEOPLE, ALL OF US WHO FILE INCOME TAX RETURNS AND HAVE TO PAY TAXES?

MR. SHERWOOD: THAT'S NOT MY POSITION, REALLY. BUT BEFORE WE GO – BEFORE I GO INTO THAT, I WOULD LIKE TO GET A COUPLE OF QUESTIONS ATISWERED FIRST, IF I MAY. IS THERE A COMPLAINT THAT HAS BEEN FILED IN THIS MATTER?

THE COURT: THERE IS AN ORDER TO SHOW CAUSE, AND THAT IS HOW THIS PROCEEDING, THIS TYPE OF A PROCEEDING IS COMMENCED, BECAUSE THE IRS HAS THE AUTHORITY TO C0MPEL YOU TO COME BEFORE IT. WHEN YOU DON'T APPEAR AS REQUIRED, THEN THEY ASK THE COURT FOR WHAT IS CALLED AN ORDER TO SHOW CAUSE WHY YOU SHOULD NOT BE COMPELLED TO APPEAR. AND THAT'S THE DOCUMENT WHICH THEN INITIATES THE COURT PROCEEDING.

MR. SHERWOOD: OKAY, SO THERE IS NO COMPLAINT FILED AT THE PRESENT TIME?

THE COURT: THERE IS NO COMPLAINT AND THERE NEED NOT BE IN THIS KIND OF A PROCEEDING.

THERE IS A VERIFIED PETITION THAT IS IN ESSENCE LIKE A COMPLAINT AND THAT APPRISES YOU OF ALL THE FACTS THAT SUPPORT THE REQUEST FOR THE ORDER TO SHOW CAUSE.

MR. SHERWOOD: WHICH BRINGS ME TO THE POINT, YOUR HONOR, WHY IS A STATUS CONFERENCE SCHEDULED FOR-AUGUST 16TH IF THERE IS NO COMPLAINT?

THE COURT: STATUS CONFERENCE IS AUTOMATICALLY SET SO THAT IF, IN FACT -- ESSENTIALLY IT IS SO WE DON'T LOSE CONTROL OF THE CASE. WE KNOW THERE IS A CASE THERE AND THE CASE HAS NOT BEEN COMPLIED WITH.FOR EXAMPLE, IN MOST CASES, ONCE THE ORDER TO SHOW CAUSE IS ISSUED, A PERSON GETS AHOLD OF THE U.S. ATTORNEY AND MAKES THE NECESSARY ARRANGEMENTS TO COMPLY WITH THE ORDER. SOMETIMES THAT DOESN'T HAPPEN, SOMETIMES A PERSON HASN'T BEEN SERVED, OR WHATEVER. WE HAVE A STATUS CONFERENCE, OR SOMETIMES THEY WILL COME IN, AND AFTER I HAVE ORDERED CERTAIN THINGS BE DONE, WE HAVE TO CHECK ON COMPLIANCE AND SO FORTH, AND THEY HAVE A STATUS CONFERENCE. IT HAS NOTHING DO WITH WHAT THE DOCUMENT IS THAT INITIATES THE ACTION, ALBEIT MOST CIVIL CASES DO

COMMEIICE WITH THE FILING OF A COMPLAINT, BUT THESE ARE DIFFERENT TYPE OF ACTIONS PURSUANT TO THE INTERNAL REVENUE CODE.

MR. SHERWOOD: MY RESEARCH WENT TO IF THERE WAS A JURISDICTION IN THIS ACTION THERE HAS TO BE A COMPLAINT.

THE COURT: THAT'S BECAUSE YOU ARE LOOKING AT THE FEDERAL RULES OF CIVIL PROCEDURE, WHICH ARE GENERAL IN THEIR NATURE, AND GENERALLY APPLY TO CIVIL ACTIONS, BUT THERE ARE OTHER TYPES OF ACTIONS FOR WHICH THERE ARE STATUTORY, SPECIFIC STATUTORY PROVISIONS, AS THERE ARE WITH THESE TYPE OF PROCEEDINGS.

MR. SHERWOOD: SHOULD NOT THOSE BE ADDRESSED OR PUT FORWARD SO I KNOW HOW TO RESPOND TO THEM?

THE COURT: THIS IS WHAT THEY HAVE DONE, THEY HAVE GIVEN YOU - THE COURT HAS ISSUED AN ORDER TO SHOW CAUSE, IT IS BASED UPON THE VERIFIED PETITION SETTING FORTH THE FACTS AS TO WHAT WAS DONE OR WASN'T DONE, AND IS REQUIRED UNDER THE INTERNAL REVENUE CODE. AND IT TELLS YOU WHAT THEY ARE SEEKING. AND THAT IS VARIOUS ITEMS THEY ORIGINALLY SOUGHT BY THE AUTHORITY THEY

HAD; NAMELY, BY THEIR OWN SUMMONS.AND WHEN YOU DON'T COMPLY WITH THAT SUMMONS AND THEY HAVE TO COME INTO COURT AND SEEK BY THIS PROCEDURE TO HAVE YOU COME BEFORE THE COURT AND EXPLAIN WHY YOU SHOULDN"T BE COMPELLED TO PROVIDE WHAT IS BEING SOUGHT, OR TO GET THE IMPETUS OF THE COURT TO THEN MAKE YOU REALIZE YOU HAVE TO RESPOND TO THIS, YOU CAN'T JUST IGNORE A SUMMONS BY THE INTERNAL REVENUE CODE.

MR. SHERWOOD: YOUR HONOR UNDERSTANDS THAT I DID RESPOND TO THE SUMMONS OF THE INTERNAL REVENUE SERVICE?

THE COURT: YES, I SAW WHAT YOU SUBMITTED IN RESPONSE TO IT.

MR. SHERWOOD: A PETITION TO QUASH. BECAUSE THERE WAS NO COURT TO SEND THE PETITION TO QUASH TO, I HAD TO SEND IT TO WHOEVER SENT THE ORIGINAL SUMMONS.

THE COURT: WELL, IN OTHER WORDS, YOU DIDN'T RESPOND TO THE SUMMONS BY PROVIDING WHAT THEY WANTED AND WHAT THEY SAID THEY ARE ENTITLED TO, SO THEY HAVE NOW FILED THIS PETITION HERE TO GET YOU TO DO THAT.

MR. SHERWOOD: MY POINT IS, BECAUSE WE ARE HERE TODAY ON THIS SUMMONS IS EXACTLY WHERE THE LAW GOES TO.THERE IS NO LAW THAT COMPELS ME TO ANSWER AN IRS SUMMONS, THAT I CAN FIND. IN FACT, IF WE GET INTO IT, BY THE NEWT GINGRICH, TOM FOLEY, TIP O'NIEIL, SPEAKERS OF THE HOUSE, HEADING PAGE TO THE HOUSE OF REPRESENTATIVES OF DOCUMENTS SAYS TITLE 26 HAS NEVER BEEN ENACTED INTO THE LAW. WHY AM I COMPELLED TO ANSWER THAT IF IT HAS NOT BEEN ENACTED INTO LAW?

THE COURT: WHERE DID YOU EVER GET THAT IDEA FROM?

MR. SHERWOOD: WELL, I AM READING IT, IT IS IN MY EVIDENCE, AND I HAVE, IF YOUR HONOR PLEASES, MORE SUBSTANTIATING EVIDENCE TO THAT FACT.

THE COURT: WELL, THE COURTS HAVE DEALT WITH THIS SO MANY TIMES IT ISN'T FUZINY, INCLUDING THE SUPREME COURT.AND THE NOTION THAT THE INTERNAL REVENUE CODE WAS NEVER ADOPTED, WHY DON'T YOU ASK NEWT GINGRICH OR TOM FOLEY – WELL, YOU WON'T BE ABLE TO ASK TIP O'NEIL, SADLY, BUT IF THEY PAY TAXES, AND UNDER WHAT AUTHORITY DO THEY, ARE THEY JUST DOING IT VOLUNTARILY BECAUSE

THEY LOVE THEIR COUNTRY AND NOT BECAUSE THEY ARE REQUIRED TO BY TITLE 26 OF THE REVENUE CODE?

MR. SHERWOOD: YOUR HONOR, I PAY TAXES. TITLE 26, BY THE EVIDENCE THAT I HAVE PRESENTED, HAS NOT BEEN ENACTED INTO LAW.

THE COURT; MR. SHERWOOD, I AM NOT GOING TO WASTE MY TIME WITH THAT NOTION, THAT IS TOTAL BALDERDASH, AND THE COURTS HAVE HELD THAT REPEATEDLY.IF YOU REALLY BELIEVE THAT, THEN I THINK YOU ARE DELUDING YOURSELF IS WHAT YOU ARE DOING, AND THAT IS SAD, BECAUSE TITLE 26 GOVERNS ALL-THE PROCEEDINGS FOR ALL MATTERS REGARDING TAXES PAYABLE TO THE UNITED STATES AND THE METHODS BY WHICH IT IS ACCOMPLISHED AND SO FORTH. AND ANYBODY WHO SAYS OTHERWISE IS TELLING YOU NONSENSE. AND THE COURTS HAVE UNIFORMLY HELD THAT FOR YEARS. IT IS NOT EVEN DIGNIFIED, I WOULDN'T DIGNIFY IT WITH AN ANSWER.

MR. SHERWOOD: THERE WERE OTHER PIECES OF EVIDENCE THAT I SUBMITTED THAT WILL PROBABLY -- THE COURT WILL PROBABLY LEND THE SAME CREDENCE TO, SO I WON'T GO INTO IT AT THIS TIME.

THE COURT: THEY DON'T SUPPORT ANY NOTION THAT SOMEHOW YOU DON'T HAVE TO RESPOND TO EITHER THE SUMMONS THAT WAS SERVED UPON YOU AND THE DOCUMENTS THAT ARE SOUGHT, NOR WHAT IS NOW BEING SOUGHT BY THE IRS, AND NOW IS BEING SOUGHT FROM YOU HERE IN COURT BY WAY OF THE ORDER TO SHOW CAUSE. THEY MAY PERSUADE YOU, BUT THEY HAVE NEVER PERSUADED ANY COURT, AND THEY DON'T PERSUADE ME.

MR. SHERWOOD: MAY I GO TO THE SUMMONS ITSELF IN THE VERIFIED PETITION OF MRS. AGUILAR?

THE COURT; WHAT IN PARTICULAR ARE YOU REFERRING TO?

MR. SHERWOOD: WHAT I AM PARTICULARLY REFERRING TO IS IN HER VERIFIED PETITION, SHE SAYS SHE HAS NO RECORDS TO ESTABLISH A LIABILITY FOR ME TO RESPOND.IF SHE HAS NO RECORDS TO ESTABLISH A LIABILITY, WHAT BASIS DID SHE USE TO INITIATE COLLECTION ACTION IN SEPTEMBER OF 1995. NOW EITHER SHE HAD RECORDS OR SHE DOESN'T HAVE RECORDS. IF SHE HAS THE RECORDS, THEN SHE HAS LIED IN HER VERIFIED PETITION. AND IF SHE DOESN'T HAVE THE RECORDS, THEN SHE HAD NO BASIS FOR PUTTING COLLECTION ACTION ON ME IN

SEPTEMBER OF 1995.

MR. DENIER: YOUR HONOR, IF I MAY ASSIST THE COURT, THERE WERE TWO SUMMONS, ONE WAS A COLLECTION SUMMONS WITH RESPECT TO COLLECTIONS ALREADY MADE FROM 1989 TO 1991. THE SECOND IS A SUMMONS FOR DOCUMENTS THAT WOULD HELP HER DETERMINE HIS 1984 TAX LIABILITY. SO MR. SHERWOOD IS A LITTLE CONFUSED HERE. THE COLLECTION ACTUALLY DOESN'T RELATE TO 1994 BECAUSE WE DON'T HAVE AN ASSESSMENT THEN, WE HAVEN'T DETERMINED HIS LIABILITY FOR 1994.

THE COURT: WAS IT 1994?

MR. DENIER: 1994-.IS THE SUMMONS SEEKING INFORMATION TO DETERMINE HIS LIABILITY FOR THAT YEAR. THERE HAVE ALREADY BEEN DETERMINATIONS AND ASSESSMENTS MADE WITH RESPECT TO THE EARLIER YEARS, AND FOR THOSE YEARS WE ARE SEEKING INFORMATION OF ASSETS AND LIABILITIES SO WE CAN DETERMINE HOW TO COLLECT THOSE LIABILITIES.

THE COURT: FOR WHAT YEARS HAS – IN THE PAST HAS MR. SHERWOOD FILED INCOME TAX STATEMENTS?

MR. DENIER: I DON'T HAVE THAT INFORMATION BEFORE ME, BUT YOU CAN ASK MR. SHERWOOD THAT INFORMATION.

MR. SHERWOOD: I FILED ALL YEARS EXCEPT 1989, 19901 1991 AND 1994. ALL OTHER YEARS RAVE BEEN FILED.

I THINK IF YOU LOOK AT WHAT SHE HAS PRESENTED IN HER VERIFIED PETITION, I SEE NO DIFFERENCE BETWEEN 1989, '90 AND '91 IN ONE PARAGRAPH, AND THEN GOING FOR 1994 IN THE OTHER PARAGRAPH.

THE COURT: WELL, THEY SUBMITTED – YOU RECEIVED, I ASSUME, THE NOTICE OF LEVY ON WAGES AND SO FORTH, AND IT LISTS AT LEAST WHAT THEY KNOW AS OF THAT TIME, BUT THEY LIST FOR 1989, 1990, 1991. NOW, YOU DIDN'T FILE RETURNS IN THOSE YEARS?

MR. SHERWOOD: NO, MAMAM, I DID NOT.

THE COURT: AND SO YOU ARE NOT BEING VERY HELPFUL WITH THEM IN TRYING TO DETERMINE WHAT TAXES YOU MAY BE LIABLE FOR IF YOU DON'T FILE A RETURN.

MR. SHERWOOD: BUT THEY INITIATED THE COLLECTION ACTION FOR 1989, 1990 AND 1991 WHEN THEY SAY THEY HAD NO RECORDS TO DO THIS.

THE COURT: WELL, THAT'S NOT TRUE. THERE ARE EXHIBITS THAT ARE APPENDED HERE THAT REFLECT PAYMENTS FOR -FROM BUFFALO AIRWAYS.AIRWAYS? WERE YOU EMPLOYED BY SOMETHING CALLED BUFFALO

MR. SHERWOOD . YES, MAMAM.

THE COURT: THAT IS AN AIRLINE?

MR. SHERWOOD: YES, MAMAM, KANSAS CITY, MISSOURI.

THE COURT: WHAT IS IT WITH PILOTS, OR AIRLINE EMPLOYEES, DO THEY HAVE SOME NOTION THAT -- SOMEBODY SENDS THEM LITERATURE AROUND THE AIRLINES AND TELLS THEM THEY DON'T HAVE TO PAY TAXES?

MR. SHERWOOD: I HAVE NEVER BEEN INVOLVED IN ANY OF THAT.

THE COURT: IT WOULDN'T BE THE FIRST TIME I HAVE HAD AIRLINE EMPLOYEES WHO DIDN'T THINK THEY NEEDED TO PAY TAXES.

MR. DENIER: MR. SHERWOOD IS CONFUSING THINGS. THE SUMMONS, WITH RESPECT TO '89, '90 AND '91 IS PURELY A COLLECTION SUMMONS. HOW THEY DETERMINED HIS TAX LIABILITY, THEY DETERMINED FOR WHATEVER INFORMATION THEY COULD GET FOR THOSE YEARS, BUT THAT IS SEPARATE AND DISTINCT FROM 1994.

AND PROBABLY, TO FURTHER HELP HIM ALONG, SIMPLY BECAUSE WE MAY HAVE SOME INFORMATION TO DETERMINE LIABILITY DOESN'T MEAN WE ARE PROHIBITED FROM SUMMONING INFORMATION FROM HIM TO MORE ACCURATELY DETERMINE HIS CORRECT TAX LIABILITY.

YOU MIGHT NOTICE IN THE SUMMONS WE ASKED FOR INFORMATION WHICH COULD ESTABLISH DEDUCTIONS. I MEAN, WE ARE IN A SITUATION WHEN A TAX PAYER LIKE MR. SHERWOOD DOES NOT FILE A RETURN, OR REFUSES TO TRY AND RECONSTRUCT HIS TAX RETURN, WE MAY HAVE, IF HE IS A W-2 WAGE EARNER, WE MAY HAVE INFORMATION INDICATING SOME INCOME. WE MAY HAVE INFORMATION OF 1099S FROM BANKS INDICATING OTHER INCOME. WE HAVE PROBABLY NO INFORMATION, EXCEPT MAYBE A MORTGAGE, HE MIGHT HAVE INFORMATION FILED. I AM NOT SURE THEY HAVE ACCESS TO THAT TO DETERMINE HIS DEDUCTIONS. SO ALL SHE IS TRYING TO DO IS HELP HIM GET AII ACCURATE DETERMINATION OF HIS TAX LIABILITY, AIID WE ARE ENTITLED TO SEEK THAT INFORMATION. WE ARE NOT LIMITED TO WHAT LITTLE INFORMATION WE CAN FIND. WE ARE ENTITLED TO GO AHEAD

A-42 cont.

AND TRY TO DETERMINE THE CORRECT TAX LIABILITY.

THE COURT: FOR -89, '90 AND '91, THEY HAVE ALREADY MADE THAT DETERMINATION BASED UPON WHAT WAS AVAILABLE TO THEM. THEY CANNOT DO THAT FOR 1994 BECAUSE THEY DON'T HAVE ANY INFORMATION. BUT YOU FILED A RETURN I N '93?

MR. SHERWOOD: YES, MA-AM, AND 1992. AND ON JULY THE 16TH, I RECEIVED A CORRECTION FROM MRS. AGUILAR TO A LEVY OR LIEN ON SOME PROPERTY THAT I HAVE, AND SHE INCLUDES 1992. SHE ISSUED TWO NOTICES OF LIEN FOR THE SAME YEARS IN QUESTION, AND THE FIGURES DON'T JIVE IN EITHER ONE OF THEM. ON ONE OF THEM SHE INCLUDED 1992, AND IT IS HARD FOR ME TO HAVE ANY CONFIDENCE SHE IS TRYING TO HELP ME IN DETERMINING THE TAX LIABILITY WHEN SHE KEEPS RUNNING A-ROUND AND ADDING OTHER THINGS TO IT.

THE COURT: HOW WAS SHE SUPPOSE TO DETERMINE IT AT ALL FOR 1994, OR ANY OF THESE OTHER YEARS, WHEN YOU DON'T FILE RETURNS? DID YOU HAVE INCOME IN 1994?

MR. SHERWOOD: SOME, YES, MAMAM.

THE COURT: WERE YOU EMPLOYED BY SOMEBODY ELSE OR SELF-EMPLOYED?

MR. SHERWOOD: PARTIALLY EMPLOYED. I WAS LAID OFF. I WORKED SOME, AND SOME I DIDN'T WORK.

THE COURT: WELL, YOU NEED TO FILE A RETURN. AND THEN YOU CAN LET THEM KNOW HOW MUCH YOU EARNED AND HOW MANY DEDUCTIONS. AND IT MAY BE YOU ARE ENTITLED TO A REFUND, BUT THAT DOESN'T HAPPEN IF YOU DON'T FILE A RETURN.

I AM CURIOUS AS TO WHY YOU THINK YOU WERE EXEMPT IN '89, '90 AND '91 AND '94 BUT NOT IN '921 '93 AND MAYBE EARLIER YEARS.

MR. SHERWOOD: I DON'T WISH TO BORE THE COURT WITH THE PAST, BUT I WAS BEFORE THE JUDGE IN 1982-ISH. I DON'T KNOW WHETHER YOU REMEMBER OR NOT, BECAUSE OF A LOT OF STUFF WHERE THE IRS HAD PROMISED A REFUND OF AN OVERPAYMENT THAT THEY NEVER GAVE ME, THEY DENIED ME AND FORCED ME TO GO TO COURT TO GET THE MONEY. YOUR HONOR GRANTED MY COURT CASE TO GIVE ME THE MONEY, AND I NEVER RECEIVED THE MONEY. IT WAS APPLIED TO WHAT I THINK WAS AN ERRONEOUS 1988 CLAIM, BOGUS CLAIM BY THE IRS. AND AT THAT TIME I FIGURED, RIGHT OR WRONG, THAT I WAS THE VICTIM OF ABUSE FOR CHALLENGING THEM AND THAT I

WAS GOING TO STOP FOR FIVE YEARS. THAT WAS MY DECISION.

THE COURT: THEN YOU WOULD RATHER FIND YOURSELF IN A POSITION AT SOME POINT BEING CHARGED CRIMINALLY? THAT MAKES NO SENSE. WELL, AT ANY RATE, I AM GOING TO ISSUE THE ORDER TO SHOW CAUSE, AND YOU ARE GOING TO BE COMPELLED WITHIN A CERTAIN PERIOD OF TIME TO TURN OVER THE DOCUMENTS AND RECORDS, AND SO FORTH, THAT ARE SOUGHT BY VIRTUE OF THE ORDER TO SHOW CAUSE. AND OTHERWISE RESPOND TO QUESTIONS. AND WHAT IS A REASONABLE PERIOD OF TIME AS FAR AS BOTH PARTIES ARE CONCERNED IN WHICH TO ACCOMPLISH THAT?

MR. DENIER: YOUR HONOR, I HAVE A PROPOSED ORDER WHICH ALLOWS MR. SHERWOOD TWO WEEKS, AND ASKS HIM TO APPEAR BY AUGUST 9TH. THE COURT COULD MODIFY THAT. WE THINK HE HAS HAD THE SUMMONS SINCE FEBRUARY, HE HAS HAD FIVE MONTHS TO ACCUMULATE WHATEVER DOCUMENTS OR INFORMATION HE NEEDS.

THE COURT: COULD YOU HAVE YOUR BOOKS AND RECORDS IN HERE IN TWO WEEKS?

MR. SHERWOOD: MAY I ASK A COUPLE OF QUESTIONS BEFORE I

A-42 cont.

RESPOND TO THAT, PLEASE?

THE COURT: YES.

MR. SHERWOOD: DO I HAVE AN APPEAL RIGHT TO THIS DECISION THAT YOU ARE GRANTING THAT I HAVE TO SHOW CAUSE?

THE COURT: YES, YOU DO. BUT YOU MAY WANT TO TAKE A LOOK AT SOME OF THOSE APPELLATE DECISIONS, BECAUSE MORE THAN ONE PERSON -- YOU CAN TELL ME HOW MANY -- HAVE BEEN SANCTIONED BY THE COURT OF APPEALS; IN OTHER WORDS, IMPOSE MONETARY SANCTIONS PAYABLE TO THE COURT FOR ESSENTIALLY WHAT THEY VIEW AS FRIVOLOUS APPEALS, SO YOU MAY WANT TO TAKE A LOOK AT THOSE CASES.

MR. SHERWOOD: MY SECOND PROBLEM IS THAT WE HAVE HAD A MAJOR ACCIDENT IN MY HOUSE, AND MY WIFE WAS BUSTED UP. I HAVE HER HOME FROM THE HOSPITAL, AND MOST OF MY TIME IS SPENT TAKING CA.RE OF HER. AND IF I HAD TO RESPOND TO THIS, I WOULD LIKE A LITTLE LONGER PERIOD OF TIME.

THE COURT: 30 DAYS?

MR. SHERWOOD: 30 OR 45. 45 WOULD REALLY BE A HELP, IF I COULD HAVE 45 DAYS.

THE COURT: YOU HAVE WAITED THIS LONG, YOU ARE UNDER AN ORDER, AND IF YOU WOULD INCLUDE IN THAT AKID *MAKE* SURE NO RECORDS, BOOKS OR DOCUMENTS, ANYTHING AT ALL THAT MAY RELATE TO ANYTHING THAT WOULD BE HELPFUL IN ASSESSING TAX LIABILITY, NONE OF THAT IS TO BE DESTROYED.

MR. SHERWOOD: I DON'T OPERATE THAT WAY, YOUR HONOR.

THE COURT: I JUST WANT TO MAKE IT CLEAR. WOULD YOU ADD THAT TO THE ORDER THEN, AND SUBMIT IT, AND WE'LL PUT IT FOR 45 DAYS.

MR. DENIER: I WILL, YOUR HONOR.

THE COURT: OKAY. MR. SHERWOOD:

MR. SHERWOOD: AND YOU WILL COPY ME ON IT?

THE COURT: YOU WILL GET A COPY WITH THE COURT AFTER I HAVE SIGNED IT AND IT HAS BEEN FILED.

MR. SHERWOOD: NICE TO SEE YOU AGAIN.

THE COURT: NOW FILE YOUR RETURNS AND DON'T GET INTO TROUBLE, MR. SHERWOOD.

PARALLEL TABLE OF AUTHORITIES AND RULES

The following table lists rulemaking authority (except 5 U.S.C. 301) for regulations codified in the *Code of federal Regulations*. Also included are statutory citations which are noted as being interpreted or applied by those regulations.

The table is divided into four segments: United States Code citations, United States Statutes at Large citations, public law citations, and Presidential document citations. Within each segment the citations are arranged in numerical order:

For the United States Code, by title and section;

For the United States Statutes at Large, by volume and page number.

For public laws, by number; and

For Presidential documents (Proclamations, Executive orders, and Reorganization plans) by document number.

Entries in the table are taken directly from the rulemaking authority citation provided by Federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate. Because Federal agencies sometimes present these citations in an inconsistent manner, the table cannot be considered all-inclusive.

The portion of the table listing the United States Code citations is the most comprehensive, as these citations are entered into the table whenever they are given in the

authority citations provided by the agencies. United States Statutes at Large and public law citations are carried in the table only when there are no corresponding United States Code citations given.

For a list of current public laws cited as rulemaking authority, see the Parallel Table of Authorities and Rules in the monthly "List of CFR Sections Affected" (LSA).

This table is revised as of January 1, 1995. Additions and removals to the table resulting from regulations published in the *Federal Register* since January 1, 1995, are found in the current month's edition of the LSA.

Authorities

26 U.S.C. (1986 I.R.C.) Continued CFR

6001.....26 Parts 1, 31, 55, 156
27 Parts 19, 53, 194, 250, 296

6011 – 6012.....26 Part 1

6011.....26 Parts 31, 40, 55, 156, 301
.... 27 Parts 25, 53, 194

6015.....26 Part 1

6020 .....27 Parts 53, 70

6021.....27 Parts 53, 70

6031.....26 Part 1

6033.....26 Part 301

6036.....26 Part 301

6038 – 6038B.....26 Part 1

6038A.....26 Part 1

6039A.....26 Part 7

6041.....26 Part 1

6043.....26 Part 1

6045.....26 Parts 1, 5f

6047.....26 Part 35

6048.....26 Part 404

6049.....26 Part 1

6050D.....26 Parts 1, 602

6050H – 6050I-1.....26 Part 1

6050K – 6050L.....26 Part 1

6050M.....26 Parts 1, 301

6050P.....26 Part 1

6051 ....26 Part 31

6053.....26 Part 31

6056.....27 Part 22

6059.....26 Part 301

6060.....26 Part 1

6061.....26 Part 156
27 Parts 22, 25, 53, 194, 270, 285, 290

6064.....27 Part 70

6065.....26 Part 1
27 Parts 18, 20, 22, 24, 25,
194, 197, 252, 270, 285,290

6071..... 26 Parts 1, 31, 40, 55, 154, 156
..... 27 Parts 53, 194

6081.....27 Part 53

A-43 cont.
6090.....26 Part 43

6091.....26 Parts 1, 40, 44, 46, 55, 156,
... 27 Parts 24, 25, 53, 194, 197,

6101 – 6104.....27 Part 53

6101.....26 Part 40

6102.....27 Part 70

6103 – 6104..... 26 Part 301

6103.....20 Parts 401, 422
42 Parts 401

6109.....26 Parts 35a, 40, 150
27 Parts 19, 22, 24, 53, 194, 197, 270, 285

6111 –6112.....26 Part 301

6151.....27 Parts 22, 25, 53, 194, 270, 290

6154.....26 Part 1

6155.....27 Parts 53, 70

6157..... 26 Part 31

6158.....26 Part 301

6159.....27 Part 70

6161.....26 Part 158.
.27 Part 53

6201.....27 Part 70

A-43 cont.
6203 – 6204.....27 Part 70

A-43 cont.

6205.....26 Part 31

6223..... .....26 Part 301

6227.....26 Part 301

6230 – 6231..... ... 26 Parts 1, 301

6232.....26 Parts 41, 150

6233.....26 Part 301

6241.....26 Part 301

6245.....26 Part 301

6301 – 6303.....27 Part 53

6301-6302.....27 Part 24

6301 – 6302.....27 Parts 24.
25, 250, 270, 275.

6301.....27 Part 70

6302..... ....26 Parts 1, 31, 40,
27 Parts 19, 251, 285
31 Parts 203, 214

6303.....27 Part 70

6311.....27 Parts 19, 24, 25, 53, 70, 194, 270

6313 - 6314.....27 Part 70

6313.....27 Parts 25, 270, 275, 295.
A-43 cont.
6314.....27 Part 194

6321..... .27 Part 70

6323.....26 Part 1
27 Part 70

6324A – 6324B..... .26 Part 301

6325.....26 Part 401
.....27 Part 70

6326.....26 Part 301
27 Part 70

6331 – 6343.....27 Part 70

6334..... 26 Part 404

6364.....26 Part 31

6401.....27 Part 70

6402.....27 Parts 25, 53, 194, 197, 270, 285, 290.

6404..... ...26 Part 301
27 Parts 53, 70, 270, 275, 285, 290

6407.....27 Part 70

6416.....27 Parts 53, 70.

6423.....27 Parts 70, 270

6426.....26 Part 154

6501.....27 Part 70

6503.....27 Part 70

6511.....27 Parts 70, 194, 197

6513 – 6514.....27 Part 70

6532.....27 Part 70

6601 – 6602.....27 Part 70

6601.....27 Parts170, 194, 296

6611.....27 Part 70

6621 – 6622..... 27 Parts 70, 170, 206,
24, 25, 197, 270, 285

6689.....26 Part 301

6701.....27 Part 70

6721.....26 Part 35a

6723.....27 Part 70

6801.....27 Part 70

6804.....27 Part 250

6806.....27 Parts 19, 22, 25, 270, 285, 290

6851.....26 Part 1

6862 – 6863.....27 Part 70

6867.....26 Parts 1, 301

6901.....27 Part 70

7011.....27 Parts 19, 22, 24, 25, 70, 194, 270, 285, 290

7025.....27 Part 197

7101 - 7102.....27 Part 250

7101..... 26 Part 403
27 Parts 72, 275

7102.....27 Parts 70, 250

7121 - 7122.....27 Part 70

7207.....27 Part 70

7209.....27 Part 70

7212.....27 Parts 170, 270, 275, 285, 290, 295, 296

7213..... 27 Part 197

7214.....27 Part 70

7216.....26 Parts 1, 301

7302.....27 Parts 24, 252

7304.....27 Part 70

7322 – 7327.....26 Part 403

7322 – 7326.....27 Part 72

7325.....27 Parts 270, 285

7326.....27 Part 72

7327.....27 Part 72

7342.....27 Parts 24, 25, 170. 270, 275, 285, 290, 295, 296

7401.....27 Part 70

7403.....27 Part 70

7406.....27 Part 70

7423 – 7426.....27 Part 70

7429 – 7430.....27 Part 70

7432.....27 Part 70

7502 – 7503.....27 Parts 24, 70, 270

7505 – 7506.....27 Part 70

7510.....27 Part 19

7513.....27 Part 70

7519.....26 Part 1

7520.....26 Parts 1, 20, 25, 301

7601 – 7606..... ...27 Part 70

7602.....27 Parts 170, 296

7606.....27 Parts 24, 25, 170, 270, 285, 290, 285, 296

7608.....27 Parts 70, 170, 296

7610.....27 Part 70

7622 – 7623.....27 Part 70

7624.....26 Part 301

7651 et seq.....40 Part 76

7651 – 7652.....27 Part 250

7652.....27 Part 275

7653.....27 Part 70

7654.....26 Part 1

7701.....26 Parts 1, 31, 301

....7804.....26 Part 1

7805.....20 Part 615
26 Parts 1, 3

PREFACE – 1994 EDITION

This twelfth edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, Is a consolidation and codification of all the general and permanent laws of the United States In force on January 4, 1995. By statutory authority, this edition may be cited "U.S.C. 1994 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, and 1982.

Because many of the general and permanent laws that are required to be Incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing, comprehensive project authorized by law to revise and codify, for enactment Into positive law. each title of the Code. When this project Is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1. 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46. and 49 have been revised, codified, and enacted into positive law and the text thereof Is legal evidence of the laws therein

contained. The matter contained in the other titles of the Code is prima facie evidence of the laws.

The title and chapter structure of the 1988 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1988.

This edition was prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts to make this edition as nearly perfect as possible.

Signed NEWT GINGRICH
Speaker of the House of Representatives

WASHINGTON, D.C. January 4, 1995
(see: page vii Preface Page United States Code)

PREFACE – 1988 EDITION

This eleventh edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 3, 1989. By statutory authority, this edition may be cited "U.S.C. 1988 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, and 1982.

Because many of the general and permanent laws that are required to be incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing, comprehensive project authorized by law to revise and codify, for enactment into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46, and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein

contained. The matter contained in the other titles of the Code is prima facie evidence of the laws. The title and chapter structure of the 1982 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1982.

This edition was prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts to make this edition as nearly perfect as possible.

Signed THOMAS FOLEY
Speaker of the House of Representatives

WASHINGTON, D.C. June 30, 1989
(see: page vii Preface Page United States Code)

PREFACE-1982 EDITION

This tenth edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 14. *1983.* By statutory authority, this edition may be cited "U.S.C. 1982 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952. 1958, 1964, 1970, and 1976.Because many of the general and permanent laws that are required to be incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing. comprehensive project authorized by law to revise and codify, for enactment Into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1. 3. 4. 5. 9, 10, 11, 13, 14, 17, 18, 23, 28. 31. 32, 35, 37, 38, 39, 44. and 49 have been revised, codified, and enacted into positive law and the text thereof Is legal evidence of the laws

therein contained. The matter contained in the other titles of the Code is prima facie evidence of the laws.

The title and chapter structure of the 1978 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1976.

This edition was prepared and published under the supervision of Edward P. Willett, Jr., Law Revision Counsel of the House of Representatives.]with the assistance of the 'West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts to make this edition as nearly perfect as possible.

Signed THOMAS P. O'NEILL

Speaker of the House of Representatives

Washington, D.C., January 14, 1983

United States Code Titles As Positive Law

The following titles of the United States Code have been enacted into positive law by the acts enumerated below:

Title 1, General Provisions.

Title 3, The President.

Title 4, Flag and Seal, Seat od Government, and the States.

Title 5, Government Organization and Employees.

Title 6, Surety Bonds.

Title 9, Arbitration.

Title 10, Armed Forces.

Title 11, Bankruptcy.

Title 13, Census.

Title 14, Coast Guard.

Title 17, Copyrights.

Title 18, Crimes and Criminal Procedure.

Title 23, Highways.

Title 28, Judiciary and Judiciary Procedure.

Title 31, Money and Finance.

Title 32, National Guard.

Title 35, Patents.

Title 37, Pay and Allowances of the Uniformed Services.

Title 38, Veterans' Benefits.

Title 39, Postal Service.

Title 44, Public Printing and Documents.

Title 46, Shipping.

Title 49, Transportation.

NOTE: Title 26 is not listed.

UNITED STATES DISTRICT COURT

Raymond Bailey Sherwood

Plaintiff,

SUMMONS IN A CIVIL CASE

CASE NUMBER: C 97 2796 CW

V.

MARILYN HALL PATEL

Defendant.

TO:
Marilyn Hall Patel
United States Federal Judge
Northern District of California
450 Golden Gate Ave.
San Francisco, Calif.

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

Raymond B. Sherwood
1612 Merian Dr.
Pleasant Hill, Calif. 94523

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Stamped RICHARD W. WIEKING Date: JUL 30 1997

Signed MARY ANN BUCKLEY Deputy Clerk